SMA THE ARBITRATOR

SOCIETY OF MARITIME ARBITRATORS, INC.

Volume 55 / No. 1 February 2025

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President's Message

By LeRoy Lambert, SMA President

The SMA and its members have been busy since the last issue of *The Arbitrator* was published in October!

The results from 2024 are in. 155 appointments were reported to the SMA, up from 125 in 2023. We issued 21 awards (three of which were confidential) up from 14 in 2023. Let's keep it going in 2025!

In addition to hearing and deciding disputes, members of the SMA have been busy spreading the word, as you can see from the "Spotlight on the SMA" at pp. 30-32 where you can also read about our monthly luncheons, including the December 2024 Holiday Luncheon honoring Raymond J. Burke, Jr., for his support of the SMA during his long and illustrious career.

We also welcomed four new members: Jan Gisholt, Mike Mitchell, Mark Newcombe and Bruce Richards. Jan and Mike are featured in "Focus on SMA Members" at p. 28. Mark and Bruce will be introduced in our next issue. Welcome all!

As for me, I attended the William Tetley Lecture at Tulane University School of law on 28 January. Ann Fenech, President of the Comité Maritime International and Partner at Fenech & Fenech in Malta, spoke on "The Role of the CMI in the Unification of International Maritime Law."

On 31 January, I attended the 3rd Annual Tulane Law School Offshore Wind Conference, hosted by the Port of New Orleans. The conference was timely given the change in administration. Stakeholders—including supporters of President Trump—are mobilizing and making their case during the review period about the economic benefits to the US from continuing the development of offshore wind for a wide swath of US industries, including shipbuilders, repairers, seafarers, and landowners adjacent to staging areas.

The editors have added a "Writer's Circle" column (p. 29) where you will read that The Tulane Maritime Law Journal recently published an article which I co-authored with Brian McEwing of Reeves McEwing of Philadelphia, titled "Enforcement of Arbitration Clauses in Seafarer Employment Contracts under State Law," 49 Tulane Maritime Law Journal 55 (2025) (we hope to publish a link on the SMA website soon).

Although the Federal Arbitration Act exempts seafarer employment contracts from its scope, numerous courts have held that this does not mean that Congress, by "reverse preemption," precluded employers and seafarers from choosing to have disputes resolved by arbitration under state law, with the employer paying for the cost of the arbitration. In addition, those courts have held that allowing such disputes to be resolved by arbitration under state law does not contravene the Constitution's uniformity clause. Moreover, employers and unionized seafarers have long agreed to arbitrate disputes arising under numerous federal statutes.

Arbitration of personal injury disputes before experienced maritime arbitrators would reduce the delays litigants presently experience in backlogged court systems before judges who have little or no experience in maritime personal injury cases and would provide more prompt and predictable results for all litigants.

As this issue was going to press, we learned that our esteemed former SMA President (2005-2009), Klaus C.J. Mordhorst, passed away on February 8, 2025. See the "In Memoriam" at p. 32. Our deepest condolences to his family.

Letters to our Friends and Supporters to renew their support in 2025 have gone out. Thank you to those who contributed in 2024 and thank you in advance for your support in 2025.

LeRoy Lambert
President

Sinking the *United States*: the Battle to Save the World's Fastest Passenger Liner and America's Flagship

By Charles B. Anderson, SMA Member

For many years now, shoppers at the IKEA Superstore on Christopher Columbus Boulevard in Philadelphia have been met with a ghostly sight: across the street the transatlantic superliner *SS United*

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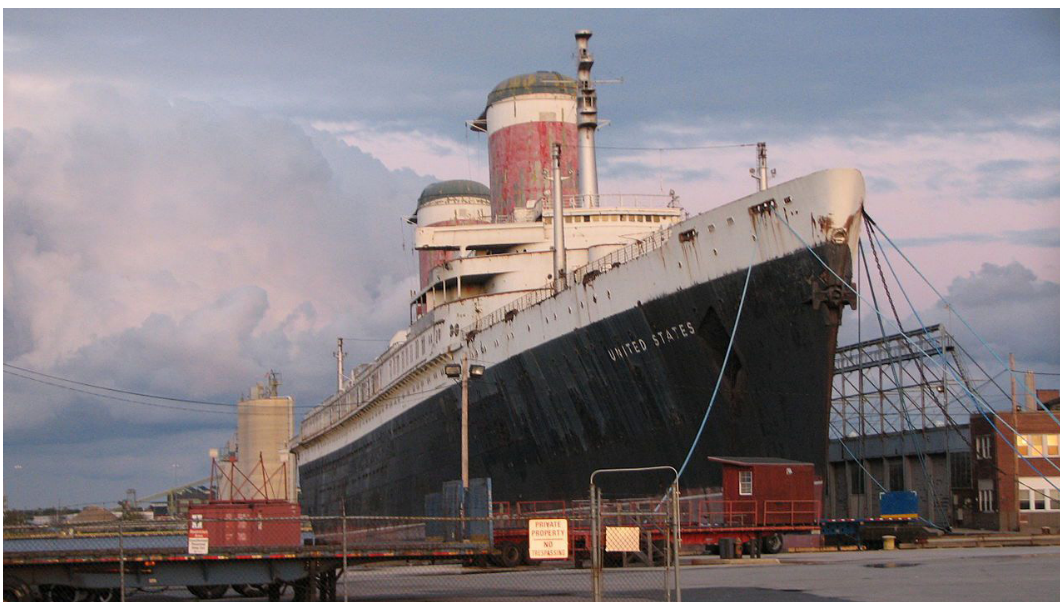
States, which still holds the record as the fastest liner in the world, lies silently alongside a drab warehouse dock, her once gleaming red, white and blue funnels now faded with age and paint peeling from her nearly 1,000 foot long hull. Known only by most passersby as "the IKEA Boat", the ship hasn't moved from her berth in nearly 30 years.

Flash back to July 3, 1952 at Pier 86 in New York's North River, and the scene was very different: The United States, or "Big U" as she would come to be known by her crew and thousands of loyal passengers, was about to embark on her maiden voyage from New York to Southampton England with one overriding if unannounced objective: to capture the coveted Blue Riband for the fastest transatlantic crossing from the Cunard liner *RMS Queen Mary.*

In his definitive book *The Big Ship,* the noted maritime historian Frank Braynard summed it up perfectly: "[s]ome 8,000 invited guests of the 1,600 passengers gave a festive feeling to the sailing, keeping stewards running for ice, champagne and other wants. Another 5,000 onlookers clustered about the street end of the pier stopping traffic on 12th Avenue. At 12:07, flags and bunting draped from her masts, the great new superliner began to ease into the current of the Hudson. Colored confetti and streamers were thrown from the shore and from the ship. The band played 'Anchors Aweigh'. At 12:20 she cast off from her Moran tugs and blew three deep-throated blasts as the white water churned from her stern. Two hours and 16 minutes later, at 2:36 to be exact, she passed Ambrose Light and was pouring on the oil."

It was the lifelong goal of the ship's designer, William Francis Gibbs, already America's most accomplished naval architect, to build a vessel that would be the first American liner to win the Blue Riband in over a century. The ship did not disappoint Mr. Gibbs. Three days, 12 hours and 12 minutes after leaving Ambrose Light the *United States* passed Bishop's Rock, breaking the *Queen Mary's* record by an astonishing ten hours. During the eastbound crossing the United States achieved an average speed of 35.50 knots, securing the Blue Riband which she still holds. On the return westbound passage, the ship set another record, completing her maiden voyage at an average speed of over 35 knots. The ship received an ecstatic welcome when she entered New York harbor, with helicopters overhead and fireboats, ferries and small pleasure craft joining the waterborne parade. Commodore Harry Manning and Chief Engineer William Kaiser were given a tickertape parade up Broadway. There is a bronze plaque on the sidewalk commemorating the event, not far from another celebrating the first Apollo moon landing.

The *United States* was built as a testament to American optimism, ambition, power and technical prowess following World War II. The ship was constructed with American labor and received subsidies from the federal government for pos-



The *SS United States* at the Penn Warehousing pier in Philadelphia

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sible use as a troop ship with the ability to carry 14,000 troops across the Atlantic in 48 hours without refueling. The design of her propellers and top speed remained a closely guarded secret for years. Virtually no wood was used in her construction and furniture due to Gibbs's near obsession with fire prevention.

Commodore Manning retired shortly after the maiden voyage and in March 1953 my father, John Anderson, was appointed permanent master and US Lines Commodore. For the next 12 years the *United States* enjoyed what has been described as the "glory years" for American passenger liners. Among the ship's passengers were many celebrities of the day including Bob Hope, Princess Grace of Monaco, Salvador Dali, Marilyn Monroe, Duke Ellington, Walt Disney and the Duke and Duchess of Windsor. Presidents Harry Truman and Dwight Eisenhower and future Presidents John F. Kennedy, Jr. and Bill Clinton, traveling to Oxford on a Rhodes Scholarship, were also passengers, as well as business leaders, military personnel, tourists, emigrants and students. The ship's most famous passenger, however, never left her stateroom suite. On the eastbound crossing in March 1963 the *United States* carried Leonardo da Vinci's "Mona Lisa", returning to the Louvre in Paris after exhibitions in Washington and New York.

US Lines would not permit family members to travel on the ship while the ship's officers were on duty, but as a high school student I was allowed to make a number of overnight trips as the only passenger when the ship went for dry docking in Newport News. Watching the lights of Manhattan as the great ship passed silently down the North River and out to sea was an unforgettable experience.

The SS *United States* on her triumphal return to New York on July 15, 1952

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Even after the introduction of the Boeing 707 jet liner in 1958, the ship continued to operate at almost full capacity, but trouble loomed on the horizon. Beginning in the 1960s the ship was beset with frequent labor disputes and strikes, which would ultimately lead to her lay-up. One of the most serious was a tugmen's strike on February 7, 1957. Thousands were watching nervously from shore as my father docked the 990-foot liner without tugs, a feat he would have to perform two more times in his career. The last one came in February 1964 on the final voyage before his retirement during a blinding snowstorm.

The 1960's saw the end of the ship's two main competitors, the *Queen Mary* and *Queen Elizabeth,* and the *United States* was not far behind. In November 1969, just before she was scheduled to embark on a world cruise, the ship was abruptly withdrawn from service. Paint brushes were left in their cans and uniforms left hanging in closets in the expectation that her lay up would only be temporary. Shortly before her retirement I made my only transatlantic trip from New York to Bremerhaven, Germany. The ship seemed as spotless then as if she had just come from the builder's yard.

As a reserve ship for the US Navy, the *United States* was hermetically sealed at her berth in Newport News in order to preserve her interiors and machinery for deployment should the need arise. She remained in a state of suspended animation until 1978, when the US Maritime Administration decided to list the ship for sale. She then passed to a series of different owners, each with grandiose plans for her return to service.

The first was Richard Hadley, a Seattle real estate developer, who planned to convert the ship into seagoing time-share condominiums. In an urgent effort to raise funds, he had the ship's furniture and interior fittings auctioned off in 1984. Next was Fred Mayer, who bought the ship in 1992 in order to create a running mate for Cunard's *Queen Elizabeth 2*. He arranged for the ship to be towed to Turkey and the Ukraine for the removal of asbestos and other hazardous material, and then towed back to Philadelphia, where she has remained since.

Another real estate developer, Edward Cantor, bought the ship in the hope of returning her to seagoing service. The ship was put up for sale after his death in 2002. Norwegian Cruise Line (NCL) purchased the vessel in 2003 and announced plans to restore the ship as part of its American-flagged cruise service. The global economic crisis caused these plans to founder, and the ship was again listed for sale in 2009.

When NCL's efforts to sell the ship were unsuccessful, NCL began accepting bids from scrapyards. This announcement spurred SS United States Conservancy, a non-profit organization formed in 2003 and formally incorporated as an independent organization in 2009, to launch a "Save Our Ship" Campaign, a race against time to build public support for the vessel, prevent her sale for scrap and raise funds for her purchase and restoration.

In July 2010 the Conservancy announced that it had received a leadership grant from Philadelphia philanthropist H. F. "Gerry" Lenfest enabling the ship's purchase as well as upkeep for 20 months, marking the first time in the vessel's history that a group concerned primarily with the vessel's historical significance and preservation owned her. While the Conservancy's purchase of the *United States* granted it a crucial reprieve, the ship had not been saved. The Conservancy launched a national effort to find a permanent location for the ship and secure partnerships with potential investors while also raising funds for the ship's dockage, insurance, and other carrying costs. The Conservancy also began collecting art, artifacts and archival documentation for a future museum.

The last hope of sending the "Big U" back to sea came in February 2016, when the Conservancy partnered with Crystal Cruises on a plan to ren-

Commodore Anderson with legendary actor John Wayne

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ovate the ship as a "state-of-the art" cruise ship. Unlike NCL, Crystal carried out an extensive feasibility study at a cost of over $1 million. The study concluded that the hull was structurally sound, but that the technical and commercial challenges to return the ship to service were insurmountable. Crystal ultimately abandoned its plan.

The challenges to returning the ship to seagoing service were indeed enormous. In addition to the technical difficulties, which would include installation of a modern diesel electric propulsion plant and modifications to the hull and interior spaces to meet modern safety standards, satisfying the demands of cruise ship passengers for balconies, atriums, and multiple restaurants would make any conversion far more expensive than the cost of constructing a completely new vessel. The Conservancy's efforts subsequently re-focused on converting the *United States* into a sustainable waterfront attraction, providing jobs and important public amenities, while educating and inspiring future generations.

The Conservancy's vision was shared by RXR, a major New York City real estate developer. In

Artist's renderings of the restored SS *United States* on Manhattan's West Side

The author, Charles Anderson, on the Conservancy's farewell visit to ship in November 2024

December 2018 the Conservancy announced an exclusive option agreement with RXR to explore options for redeveloping the ship, culminating in RXR's announcement in March 2020 of its plans to repurpose the ship as a permanently moored, 600,000 sq ft "hospitality and cultural space." In 2023 RXR and its partner, MCR Hotels, developer of the landmark TWA hotel at New York's JFK Airport, released detailed plans for the ship's redevelopment as a 1,000-room hotel, luxury restaurant, event venue, and public park near the Javits Convention Center. The project also included a museum, gallery and innovation center to be operated by the Conservancy. Images of the redesigned United States showed the vessel docked along Manhattan's West Side as part of the Hudson River Park with the top of one funnel opened up to act as a skylight illuminating the hotel and event spaces, cantilevered cabanas in place of lifeboats, a swimming pool between the funnels, and an interior-exterior ballroom on the stern.

Manhattan's Pier 76 was the optimal site for the vessel due to its proximity and pedestrian access to the Javits Convention Center. The project would have entailed the redesign and reconstruction of the crumbling adjacent piers and the creation of acres of new public green space. It would have led to over 5,700 jobs and revived economic activity on Manhattan's far west side. RXR and MCR conducted comprehensive schematic design work, extensive engineering assessments and construction feasibility studies, as well as a financial analysis to demonstrate the project's economic viability. The project team included Gibbs & Cox, the original design firm for the vessel.

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In the meantime, the Conservancy faced another challenge: in 2021, Penn Warehousing, the lessee of Pier 82 where the ship is moored, doubled the daily pier rental charge with minimal notice and later terminated its contract with the Conservancy. The dispute ultimately led to litigation and trial. In June 2024 federal district court Judge Anita Brody dismissed Penn Warehousing's rent claim but ordered the removal of the ship within 90 days, raising concerns that the ship could not be relocated within such a tight deadline. Compounding the Conservancy's dilemma, RXR announced that it was abandoning its redevelopment plans because it was unable to obtain the necessary support from the New York State and City governments to relocate the ship to New York City. Sadly, the City and State representatives' lack of vision and indifference amounted to what the late Walter Cronkite, an honorary member of the Conservancy Board, warned would be "a crime against history."

The final chapter in the battle to save the *United States* was closed in October 2024 when Florida's Oklaloosa County purchased the ship from the Conservancy with the intention of sinking her for use as the world's largest artificial reef off Destin-Fort Walton Beach. It is estimated that the project will take about 18 months at a cost of $10 million. The Conservancy will partner with the County in creating a land-based museum and visitor center consisting of re-creations of some of the ship's most iconic onboard spaces, as well as displays of the Conservancy's large collection of artwork, furniture and archival documentation of the ship's design, construction and history. The museum's exterior will incorporate original fixtures and components from the ship, including her radar mast, a propeller, and one or both of her signature red, white and blue funnels. To keep updated on these exciting museum plans as well as future events and digital exhibitions, visit the Conservancy's website at www.ssusc.org.

After months of delay, on February 19th the *United States* departed Philadelphia under tow for an 1,800 mile voyage to Mobile, Alabama, where the ship will be prepared for reefing before heading to her final resting place off the Florida coast. A sad ending to America's greatest ocean liner and one of the world's greatest maritime treasures.

* Portions of this article have been adapted from the SS United States Conservancy website, www.ssusc.org.

"Do You Feel Lucky?": Weighing the Risks of Prosecution for Potential OFAC Sanctions Violations in the Aftermath of the English Commercial Court's Recent Decision in *O v. C* [2024] EWHC 2838 (Comm)

By George J. Tsimis, Director, GJT Marine Consultants LLC / Secretary, Society of Maritime Arbitrators, Inc.

In a recent decision, the English Commercial Court addressed an OFAC sanctions issue involving "O", a U.S. publicly listed vessel owner/operator headquartered in New York City. O's vessel had loaded a cargo of naphtha in Singapore pursuant to instructions from "C", a charterer, which—on the day that cargo loading operations were completed—was added to OFAC's Specially Designated Nationals ("SDN") listing. If such a fact pattern were a hypothetical, it would challenge even the most experienced U.S. sanctions experts and legal practitioners. Therefore, my sympathies lie with Justice Nigel Teare who steadfastly addressed and decided each issue presented to him.

In his decision, which was issued on August 11, 2024, during the final year of the Biden presidency and approximately three months prior to the U.S. elections, Justice Teare ruled that the cargo in question should be sold by C to a third-party buyer, and that the proceeds of any cargo sale should be paid into the Commercial Court. Most importantly, he concluded that the vessel owner, a U.S. person, would not face a real risk of prosecution in the U.S. by complying with the Commercial Court's orders. The basis for this last ruling was that the two U.S. experts who opined on whether the risk of prosecution was real or "fanciful" disagreed, and that prosecution of the vessel owner in the U.S. was unlikely if there is "doubt" about the law and its application.

This last conclusion raises concerns because many sanctions practitioners here in the U.S. know full

well that there may not be one clear-cut answer for sanctions related scenarios or hypotheticals. Sanctions issues are complex to begin with, especially in the shipping industry, primarily because of the transitory nature of the assets involved (e.g., the vessel itself and the cargo being carried on it), and because the parties to shipping contracts tend to be foreign entities based all around the world, many of whom do not have the experience or familiarity of dealing with U.S. sanctions regulations or the government authorities that enforce them. Adding to this existing confusion is that sanctions issues involving the shipping industry have become much more politically driven in the last 10 to 15 years because of the U.S. Government's tendency to look to the Department of State—as opposed to just the Department of Treasury, which technically is OFAC's immediate overlord—in order to achieve specific long-term and short-term foreign policy goals of the current president's administration.

In this regard, the first Trump administration ("Trump 1.0") weaponized sanctions "like never before" following the U.S.'s departure from the Joint Comprehensive Plan of Action ("JCPOA")[1] by (a) using secondary sanctions to severely penalize foreign entities, (b) exerting a campaign of "maximum pressure" and concentrating enforcement on sanctions programs against Iran, Syria, and Venezuela, and (c) imposing more penalties and more severe penalties than any prior presidential administration.[2] Secondary sanctions during Trump 1.0 included OFAC civil penalty enforcements against several international shipping companies, including a COSCO tanker subsidiary, and several other vessel owners and operators who had to respond to the new reality of having their companies placed on the SDN list and then experiencing the catastrophic financial consequences of trying to remove themselves from that list. For some, bankruptcy was the only alternative.

It is with this backdrop that the recent decision of *O v. C* will be discussed. With a second Trump administration entering the White House (hereinafter "Trump 2.0"), it is hard to ignore the repercussions that the decision in O v. C might invite. Can a U.S. person participate in a voyage or transaction or in a foreign legal proceeding regarding such a transaction that might ultimately benefit an SDN? If a U.S. person complies with a foreign court order to its detriment and exposes itself to potential fines and penalties within the U.S., will it still be protected by any indemnity provisions in its underlying charter party if such prosecution is ultimately brought against it? What should foreign contract parties expect from the Trump administration if they comply with a non-U.S. court order directing the shipment or sale of cargo or disposition of any related cargo sales proceeds which might trigger U.S. sanctions regimes targeting Iran? All of these questions are in play going forward with Trump 2.0.

And what can legal practitioners or in-house legal advisers, insurers, and risk managers do to exercise appropriate due diligence in the face of such questions? How can they devise an appropriate course of action for their principals? Is a vessel owner's or charterer's due diligence analysis vis-à-vis sanctions compliance satisfied by merely stating that the company followed the order or directive of a foreign court? My short answer to this last question is no. But it reminds me of an iconic scene from a "Dirty Harry" movie where a suspected criminal is being asked at gunpoint whether or not he feels lucky, not knowing if Inspector Callahan's 44 magnum has any bullets left in it. And owners and charterers going about their business should not have to face such a "do you feel lucky" moment when exercising their due diligence. While this article will not be able to answer all of these questions, it will highlight some points of concern, anticipated issues, and considerations that might arise if the same facts in *O v. C* were to arise in an arbitration or court proceeding during Trump 2.0.

The Basic Facts of O v. C

O, the vessel owner was a Liberian corporation, which was a wholly owned subsidiary of a Marshall Islands corporation headquartered in New York and publicly listed on the New York Stock Exchange. The nationality and control of the owner and its parent company are U.S., and all operations, management, and company officers are located in New York. As such, the owner is a foreign entity owned and controlled by "U.S. persons" as defined under U.S. sanctions laws and regulations.

C, the charterer, at the completion of loading the cargo of naphtha onto the vessel, was targeted by OFAC and named an SDN pursuant to Executive Order 13846.[3] As a direct result, the owner terminated the charter party pursuant to paragraph (d) of the BIMCO Sanctions Clause and the terms of a

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Compliance clause in the charter party. Furthermore, the owner refused to discharge the cargo to the charterer.

The owner commenced a London arbitration against the charterer seeking an order that the cargo be sold and the sales proceeds deposited into a blocked account maintained by a U.S. financial institution. The owner sought such relief in arbitration because, significantly, it had obtained, on March 10, 2023, a license from OFAC to do so without any breach of sanctions.

The charterer counterclaimed and sought damages for the conversion of the cargo. The charterer did not oppose any order to sell the cargo, but it opposed having any sales proceeds deposited in a blocked account at a U.S. bank.[4] It also argued that the owner was not within the reach of U.S. sanctions.[5]

The Conflicting Expert Opinions

The main issue before the Commercial Court was whether, payment into court of the sales proceeds would constitute a breach of U.S. sanctions, and whether the risk of a prosecution of the owner or of the U.S. citizens in New York who controlled and managed the vessel was real. The evidence considered by the Commercial Court included expert advice provided by each party.

Owner's expert opined that the cargo was "blocked property" pursuant to U.S. sanctions and that the owner, being controlled by U.S. persons, was not permitted to deal with it. He noted that the owner had appropriately obtained a license from OFAC which permitted the sale of the cargo on the condition that the sales proceeds would be deposited into a blocked account at a U.S. financial institution. Consequently, he asserted that the owner could not deposit any cargo sales proceeds anywhere else. He added that if the owner's actions were pursuant to a court order from an allied jurisdiction, it would weigh against prosecution but not eliminate it. Accordingly, he stated that the owner's risk of prosecution in the U.S. was real and "not fanciful."

The charterer's expert opined that the cargo was not blocked and that the owner was not prevented from dealing with it. He added that even if the cargo were blocked, OFAC would only expect the owner to impose restrictions on it "akin to blocking" which in his opinion would include the cargo sale proceeds being paid into the English court. He further stated that the lack of any precedent involving sanctions penalties to a company or individual for complying with a court order from an allied jurisdiction, as well as OFAC's enforcement guidelines when there is no reckless or intentional conduct,[6] weighed significantly against an enforcement action. Therefore, he concluded that the risk of prosecution to the owner was fanciful.

In his decision, Justice Teare concluded that it was more likely that there would not be any criminal prosecution of the Owner. In the wake of this ruling, we now must revisit the "do you feel lucky" scenario because the *O v. C* decision will likely create more questions than answers regarding sanctions compliance during Trump 2.0. This decision is probably the most comprehensive court or arbitration decision addressing the issue of potential exposure to criminal prosecution in the context of a traditional maritime charter party dispute and will likely serve as a blueprint for future courts or tribunals addressing similar sanctions related disputes. Below are some key observations and takeaways for all of us to consider when navigating the minefield of sanctions compliance, due diligence obligation, and maritime dispute resolution in Trump 2.0.

Key Takeaway #1: The Decision Did Not Distinguish Between Civil and Criminal Penalties under U.S. Sanctions Laws and Regulations.

In *O v. C*, the Commercial Court limited its discussion and ruling to the issue of whether the owner was likely to be the subject of a criminal prosecution by OFAC if the cargo sales proceeds were deposited with the English court. There was no consideration of whether an OFAC civil penalty or enforcement proceeding against the owner could be expected. To put it bluntly, both are bad, yet each carries with it a different standard of proof and different penalties. A criminal prosecution brought by the Department of Justice would carry with it a much higher burden of proof under U.S. sanctions laws and potentially result in jail time if convicted. While technically not a criminal proceeding, an OFAC civil penalty enforcement action carries considerable financial and commercial exposure to a company running afoul of its sanctions compliance obligations. And those civil penalties can be severe and financially crippling to a company or individual.

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OFAC civil penalties accounted for the lion's share of disciplinary action undertaken by the Department of the Treasury against companies and individuals penalized for violating sanctions laws during Trump 1.0. In fact, between 2018 and 2020 under the first Trump administration, OFAC enforced civil penalties in 50 different proceedings against numerous companies with a total amount of approximately $1.384 billion in penalties.[7] The targets of these civil penalty proceedings included several financial institutions, both domestic and international such as J.P Morgan Chase ($5,263,171), Societe Generale ($53,966,916), and Standard Chartered Bank ($657,040,033), as well as shipping industry companies such as Eagle Shipping Int'l, Inc. ($1,125,000) and Mid-Ship Group ($871,837). While the aforementioned companies were able to absorb these penalties and continue their operations, a small or mid-sized vessel owner, operator, or charterer might not be able to bear the brunt of a significant civil penalty and might face financial extinction if any significant civil penalty were imposed.

In retrospect, the *O v. C* court should not have limited its ruling to assessing the likelihood of criminal prosecution of the owner and should have also considered such civil penalty enforcement in its analysis, especially considering the prospect of an incoming second Trump administration which would again weaponize OFAC civil penalties to achieve policy objectives vis-à-vis Iran. The Commercial Court should have also weighed the likelihood that the owner would face a civil penalty proceeding by OFAC if the sales proceeds were not deposited in a blocked account in a U.S. financial institution, as required by the OFAC license previously obtained by the owner. Additionally, because the owner was controlled by U.S. persons with its central operation in New York, the likelihood of facing an OFAC civil penalty enforcement action for failing to comply with the express condition contained in the existing OFAC license already obtained for the voyage is not only real, but very likely under Trump 2.0.

Key Takeaway #2: The Objectives of the U.S. Sanctions at Issue in O v. C Would Be Undermined if the Underlying London Arbitration Tribunal Were to Subsequently Rule that the Charterer—an SDN under OFAC—Was Entitled to the Cargo Sale Proceeds.

In *O v. C*, the U.S. government's sanctions policy objectives were essentially telegraphed in the OFAC license previously issued by OFAC to the owner, namely, to block any sales proceeds from reaching Iranian interests and ensuring such a result by depositing the sales proceeds in a blocked account at a U.S. bank. However, the Commercial Court's decision immediately undermined this policy objective when it ruled that the "importance of the order for payment into [the Commercial] court is that it is made in support of the arbitration and, in particular, to enable effect to be given to whatever the arbitral tribunal decides",[8] and that "[i] f the proceeds are paid into court it will be simple for the court to give effect to the decision of the arbitration tribunal."[9] But what if the arbitration tribunal incorrectly decides the application of U.S. sanctions laws to the disputes before it and rules in favor of the charterer, an OFAC SDN? Awarding money to an SDN involving Iranian sourced petroleum products would blatantly violate any U.S. sanctions policy objectives.

Such a result would never take place if the funds were kept in a blocked bank account at a U.S. bank. Justice Teare acknowledged as much in his decision when he stated "that if the proceeds of sale are placed into a blocked account at a U.S. financial institution, they may not be available to give effect to the result of the arbitration because OFAC may have a different view of the reach of U.S. sanctions than the arbitral tribunal."[10] Significantly, the deposit of funds into a blocked account at a U.S. bank was the linchpin to the OFAC license previously granted to the owner so that OFAC would have certain control over an asset belonging to an SDN. Such control over the SDN's asset would serve the purpose of the sanctions regulations against Iran and prohibit a proscribed transaction, while simultaneously protect the owner from any interpretation that it was facilitating, profiting, or otherwise inappropriately benefiting from this transaction. However, that protection to the owner would only exist so long as the owner complies with the terms of the OFAC license.

Such departure from the OFAC license terms would expose the owner to potential civil or criminal penalties in the U.S., and if the London arbitration panel thereafter makes a finding that the sales proceeds can be released to the charterer, an SDN would benefit from the transaction and the owner, a U.S. person, may be further exposed to criminal

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prosecution or OFAC civil penalties. These are results that would never take place if the funds were kept in a blocked account in a U.S. bank.

Key Takeaway #3: Did the Commercial Court Go Too Far?

After ruling that there was no real risk of criminal prosecution and that the sales proceeds could be deposited in the UK Court, Justice Teare went so far as to state that it could require the owner "to provide a cross undertaking to the court in damages fortified by an undertaking of the holding company." That way, "if the arbitration tribunal decides in favour of the Charterers but OFAC does not permit the release of the proceeds of sale, the Charterers could apply to the court for an order that the Owners, pursuant to their undertaking, pay an amount equal to the proceeds of sale to the Charterers."[11]

These dicta are, however, misplaced because they do not appreciate the fact that the owner, as a U.S. entity controlled by U.S. persons and operating in the U.S., would be unable to provide any countersecurity to an SDN, even if the court was to act as custodian for such countersecurity. Doing so would constitute facilitating an illegal transaction and unlawfully benefit a target of U.S. sanctions laws, and it would create a separate basis for potential criminal or civil penalties to be brought against the owner.[12] The owner's P&I Club would similarly be unable to post security on behalf of its member because all IG Club policies include specific sanctions related provisions which would automatically, and without notice, terminate coverage when it might expose the Club to a risk of civil or criminal penalties or other sanctions related liabilities. The only way the Owner could be permitted as a U.S. person to issue security or make a payment to the charterer in this context would be to obtain a separate license from OFAC to do so. And the owner's obtaining such a license would be highly unlikely in the wake of disobeying a fundamental term of its existing OFAC license, to wit, depositing any cargo sales proceeds into a blocked account maintained by a U.S. financial institution.

Final Considerations

The first month of Trump 2.0 has demonstrated that it is a very challenging task to keep track of the continuous flurry of executive orders and shifts in policy from the previous administration. However, some of the basic foreign policy goals of the second Trump administration, especially regarding sanctions regulations, will be no different from Trump 1.0. Trump 2.0 is again exercising "maximum pressure" and aggressively targeting Iran and its middle east proxies with economic sanctions and political pressure, and it will likely be just as aggressive with Venezuela, Cuba and North Korea. Sanctions experts here in the U.S. generally agree that the U.S. Department of Justice will be used much more during Trump 2.0 to further weaponize sanctions in a way "never seen before."[13]

Accordingly, if the fact pattern in *O v. C* were replicated this week and if a country or its judicial system were to issue orders that had the potential of undermining U.S. foreign policy with respect to sanctioned countries such as Iran—which was the subject of the sanctions regulations at issue in *O v. C*—one can reasonably postulate that the U.S. authorities, be it the Department of Justice or OFAC, would very likely and very aggressively pursue civil penalties or criminal proceedings against a U.S. person. It is therefore very likely that, if the Commercial Court were to have an opportunity to revisit the same set of facts and arguments from *O v. C* just six months later, it would reach a different result. This lack of predictability is what keeps company compliance officers, practitioners, and arbitrators awake at night, which is probably a better alternative than facing the question of "do you feel lucky?" However, the constantly changing sanctions landscape also keeps us busy, and for this reason, we can only accept and appreciate the opportunities afforded to us to face and address these complex issues, and where appropriate, explore possible solutions, provide advice, and issue comprehensive decisions.

1 The JCPOA was a product of the Obama Administration and was the primary foundation for the nuclear arms deal entered into between Iran and the P5+1 (the five permanent members of the United Nations Security Council, e.g., China, France, Russia, the United Kingdom, and the U.S., plus Germany, together with the European Union. The JCPOA was agreed in Vienna on July 14, 2015 and limited Iran's nuclear program in exchange for certain sanctions relief, which during the previous 5 years had essentially paralyzed the Iranian economy and prohibited transactions between Iran and the EU (as well as already existing US sanctions) regarding the Iranian energy, steel, shipping, shipbuilding, and port operations industries.

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2 OFAC issued a total of 26 penalties to various companies, domestic and foreign, in 2019 with a total dollar amount in fines and penalties reaching $1,289,087,059.00. This information can be found on the OFAC, Department of Treasury website at the following link: [2019 Civil Penalties and Enforcement Information | Office of Foreign Assets Control].

3 As mentioned above, Executive Order 13846 was issued by President Trump during his first term on August 6, 2018 and reinstated sanctions against Iran that had been suspended under the JCPOA and the Obama administration's Executive Order E.O. 13716 of January 16, 2016 which implemented the terms of the JCPOA in the U.S.

4 The charterer purportedly sold the cargo to a buyer on April 6, 2023. The buyer then requested the vessel owner to discharge and deliver the cargo to it on several occasions. These requests were rejected. The buyer thereafter arrested an associated vessel in Durban, South Africa, but the court set aside the arrest on July 7th. On July 31, 2023, the buyer arrested the vessel in Malaysia and that arrest was later set aside as a wrongful arrest by the court, which ruled that the alleged contract of sale was a sham and, as a result, the buyer failed to prove its ownership of the cargo or standing to assert a claim against the vessel or its owner. The buyer did not participate in the London arbitration or the application brought before the Commercial Court.

5 The Commercial Court made it clear that it would rule solely on the issues of whether an order for the sale of the cargo is appropriate and whether the sales proceeds could be deposited with the Commercial Court. Any decision regarding the reach of U.S. sanctions would be left to the arbitration panel.

6 It should be noted that numerous prior OFAC civil penalties have been imposed against companies and individuals whose conduct was neither willful nor reckless. In other words, ignorance of the law was no excuse to being penalized under OFAC sanctions laws and regulations.

7 In fact, in 2019, OFAC imposed a record amount of civil penalties totaling $1.289 billion over 26 different enforcement proceedings. Information regarding OFAC's civil penalties proceedings and the penalties imposed by it against companies for sanctions laws and regulations violations can be found at the following link which itemizes such penalties on a yearly basis: [Civil Penalties and Enforcement Information | Office of Foreign Assets Control].

8 *O v. C* decision, at ¶37.

9 *Id.*

10 *Id.*

11 *Id.*, at ¶38.

12 OFAC's Sanction Enforcement Guidelines, which was heavily relied upon by Justice Teare in his decision in *O v. C*, and which can be found at 31 CFR Part 501 as published in the Federal Register, Vol. 74, No. 215 (November 9, 2009) at page 57599 state: "Two comments suggested that, in cases concerning conduct occurring outside the United States, OFAC should consider whether the conduct in question is permissible under the applicable law of another jurisdiction. ***OFAC does not agree that the permissibility of conduct under the applicable laws of another jurisdiction should be a factor in assessing an apparent violation of U.S. laws.***" (Emphasis added).

13 See *Tradewinds* article dated February 4, 2025 at 2104 hrs. GMT by Joe Brady entitled "'Trump 2.0' dominates the talk at annual Greek-Norwegian ship forum" ("[A] hyper-aggressive US Department of Justice is likely to become a reality of the new Trump term.").

USTR Section 301 Determination on China's Targeting of the Maritime Logistics and Shipbuilding Sectors for Dominance

By Louis Epstein, SMA Arbitrator

On January 16, 2025, the Office of the United States Trade Representative ("USTR") issued a Notice of Determination Pursuant to The Trade Act of 1974 (19 U.S.C. § 2411) (the "Determination") in which it determined that "China's targeting of the maritime, logistics, and shipbuilding sectors for dominance is unreasonable and burdens or restricts U.S. commerce, and thus is actionable under Section 301(b) of the Trade Act." On the same day, the USTR issued a Report on China's Targeting of the Maritime, Logistics and Shipbuilding Sectors (the "Report").

The Determination and Report were the culmination of a process that began on March 12, 2024 with the filing on behalf of a number of U.S. trade unions of a Petition for Relief under Section 301 (the "Petition"), followed by an investigation and hearing.

The Arbitrator has asked two authors to present to our readers their differing views on the USTR findings. Their articles appear below.

Elizabeth Drake, a partner at Schagrin Associates, the law firm that filed the Petition on behalf of the unions, describes the conduct on the part of China that resulted in the USTR action and explains why she believes that remedies imposed under Section 301 can help to revive the U.S. shipbuilding industry. Colin Grabow, a policy analyst at the Cato Institute's Herbert A. Steifel Center for Trade Policy Studies, where his research focuses on domestic forms of trade protectionism, disputes the conclusion of the Determination and Report that the

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problems of the U.S. shipping industry are attributable to China and expresses doubt as to whether the proposed remedies can solve those problems.

[Editor's note:

On February 21, 2025, after we received the articles from Ms. Drake and Mr. Grabow, the USTR issued a notice of proposed action to be taken by the U.S. government in response to China's conduct. It may be found at this link: https://ustr.gov/sites/default/files/files/Press/Releases/2025/Ships%20Proposed%20Action%20FRN.pdf

There will be a brief comment period from February 21 until March 10, 2025 and, on March 24, 2025, a public hearing on the proposed USTR actions.

Among other things, the proposed actions include

- Service fees to be charged "vessel operators of China" "(a) at a rate of up to $1,000,000 per entrance of any vessel of that operator to a U.S. port; or (b) per entrance of any vessel of that operator to a U.S. port, at a rate of up to $1,000 per net ton of the vessel's capacity."
- Service fees charged to all vessel operators, regardless of nationality, with Chinese-built vessels in their fleets, including:
    - "upon the entrance of a Chinese-built vessel to a U.S. port, a fee to be charged to that vessel's operator ... at a rate of up to $1,500,000"
    - depending upon the percentage of Chinese-built vessels in the operator's fleet, fees ranging from $500,000 to $1,000,00 per entrance to a US port of any vessel in the operator's fleet ;
    - an additional fee of up to $1,000,000 per vessel entrance if the number of Chinese-built vessels in the operator's fleet exceeds 50 percent.
    - an additional fee of up to $1,000,000 per vessel entrance for operators with new orders from Chinese shipyards expected to be delivered in the next 24 months.

The wide-ranging potential consequences of these proposed remedies are discussed in a February 22, 2025 article in Lloyd's List which appears at this link: https://www.lloydslist.com/LL1152667/Sweeping-US-plan-to-target-Chinese-ships-would-snare-many-non-Chinese-operators. The proposed new measures have been sharply criticized by economists and by the World Shipping Council. See https://www.voanews.com/a/trump-administration-proposes-steep-fees-on-chinese-cargo-ships/7987079.html]

Section 301 of the Trade Act of 1974: The Right Tool to Counteract China's Unreasonable and Discriminatory Policies Aimed at Dominating Global Shipbuilding

By Elizabeth Drake, Partner, Shagran Associates

On March 12, 2024, a group of unions led by the United Steelworkers union filed a petition with the U.S. Trade Representative ("USTR") urging the administration to take action against China's policies and practices targeting the maritime and logistics sectors for dominance under Section 301 of the Trade Act of 1974. Section 301 allows the administration to investigate whether a foreign country's acts, policies, or practices are unreasonable or discriminatory and burden and restrict U.S. Commerce. If USTR finds in the affirmative, the statute authorizes a broad array of actions, including tariffs, fees, and other actions within the power of the President. The Petition alleged that China's policies in the shipbuilding and maritime sectors are the single biggest obstacle to the revitalization of the American commercial shipbuilding industry.

On January 16, 2025, the Biden Administration announced that it had found that these policies were indeed unreasonable, discriminatory, and burdening U.S. commerce, and therefore actionable under Section 301. USTR issued a lengthy report detailing the results of the investigation it undertook in response to the Petition. The Trump Administration now has until April 17, 2025 to decide which remedies to impose as a result of the investigation.

The Petition and USTR's resulting report demonstrate that the Government of China's drive to dominate the global shipbuilding, maritime, and

logistics sector is built on non-market policies that are far more aggressive and interventionist than any other country. As a result, China has seized market share, suppressed prices, and created a worldwide network of ports and logistics infrastructure that threaten to discriminate against U.S. ships and shipping companies, disrupt supply chains, and undermine vital national security interests. As the world's largest shipbuilding nation, China's aggressive intervention in these sectors is unique among countries. These interventions greatly distort the global market for commercial vessels, maritime shipping, and logistics, undermining American jobs, the industrial basis, and economic and national security.

China's campaign to dominate global shipbuilding began in earnest with the issuance of the *Tenth Five Year Plan* in 2001, in which the Government of China declared its ambition to develop its shipbuilding industry into a major world-leading industry. In 2006, China designated shipping as one of the seven strategic industries over which state-owned enterprises should maintain absolute control. In 2015, China issued *Made in China 2025*, in which shipbuilding was identified as one of ten priority sectors in which China would seek to dominate global commerce by 2025.

The Government of China has funneled hundreds of billions of dollars and adopted numerous supporting policies to achieve the goals laid out in plans for shipbuilding, and it has consolidated the leadership of these efforts in large state-owned enterprises. Government interventions to accelerate the development of the Chinese shipbuilding industry include policy loans from state-owned banks, equity infusions and debt-for-equity swaps, the provision of steel plate from state-owned steel producers at below market prices, tax preferences, grants, and lavish financing from China's state-owned export credit agencies. China also refuses to uphold the basic human rights of workers in the shipbuilding industry, providing a further unfair advantage to Chinese producers. China's plans and policies explicitly target cutting-edge technologies and high-end vessels, including those using green energy and nuclear power. The China Export-Import Bank has provided tens of billions of dollars in loans to support the construction of thousands of vessels in China for export to foreign owners, including the first container ships with the capacity to use a dual fuel diesel / LNG system, the world's largest LNG bunkering vessels, and the world's first dual fuel vessels with ammonia ready propulsion.

In addition to these acts and policies, China has given its domestic shipbuilding industry unfair advantages by mandating the purchase and use of Chinese ships by Chinese state-owned shipping enterprises and state-owned oil companies. China has also intervened in its domestic industry by directing mergers between favored state-owned companies, disapproving alliances by foreign competitors, denying berthing rights to foreign-owned ships, controlling freight rates and capacity allocations, supporting the development of key upstream maritime technologies, and tolerating intellectual property theft. Under China's "Civil-Military Fusion" policies, firms that produce commercial ships also produce military vessels, allowing for the utilization of advanced civilian technologies in the production of ships for China's Navy, and ensuring sufficient capacity to ramp up military construction when required.

These policies are just part of China's much more ambitious goal of becoming a major maritime power through the Maritime Silk Road program, part of China's Belt and Road Initiative. The goal of the program is to increase China's influence over strategic maritime corridors from China to Africa, Europe, the South Pacific, and the Arctic. Key aspects of the program include promoting state-owned shipping and logistics companies, investing in strategically located foreign ports and terminals, dominating the supply of cranes used at ports around the globe, and promoting a government-sponsored logistics platform, LOGINK. As a result, Chinese companies – primarily state-owned companies – have become leaders in financing, building, operating, and owning port terminals around the world. According to one study, there is now some link to a Chinese company or financing at over 60 percent of the world's major container ports. In addition, a Chinese state-owned company provides 70 percent of the world's cargo cranes.

This maritime and logistics infrastructure gives the Government of China access to large volumes of sensitive data regarding ship traffic, container contents, freight rates, and more. It also gives China leverage to provide preferential treatment to Chinese-built and owned ships seeking to dock and unload at ports around the world, and to potentially deny such treatment to countries or companies that do not align with China's industrial policy and geo-

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political goals. With control over ports and logistics equipment and information, the Government of China could quickly disrupt critical supply chains. Together, the acts and policies China has deployed in the maritime and logistics sector give it the tools to inflict severe economic coercion or damage against commercial or state actors that do not align with China's geopolitical goals.

The result of these policies is a rapidly growing network of Chinese-built vessels, owned and operated by Chinese shipping companies and others, financed by Chinese state-owned banks, and favored by a spreading web of global ports and terminals owned by Chinese firms. From 2000 to 2022, China's share of new vessels built each year on a global basis rose from less than 10 percent to 47 percent. In 2022, China built more new ships than the next two countries (Japan and Korea) combined. While Chinese shipyards now produce over 1,000 ocean-going vessels a year, the United States produces less than ten. China's rapid expansion in the sector has created overcapacity and suppressed global prices for commercial vessels, making it impossible for U.S. shipbuilders to invest and expand in the world market. Since China's expansion into the world's dominant shipbuilder began in the early 2000s, U.S. commercial shipyards have closed, the number of shipbuilding and repair jobs in the United States has shrunk, the number of commercial vessels constructed and delivered by the remaining shipyards has fallen, and supporting supply chains have been decimated.

The scarcity of U.S-built and U.S.-flagged ships raises important national security concerns about the availability of sufficient merchant marine resources and skills to support the military in the event of a conflict or national emergency. Indeed, of the more than 60 ships enrolled in the Maritime Administration's Maritime Security Program ("MSP") and Tanker Security Program ("TSP") – U.S.-flagged vessels that agree to be available to the Department of Defense when needed in return for an annual stipend – not a single one was produced in the United States, and the last three tankers enrolled in the program were built in China.

In short, it will simply not be possible for the U.S. shipbuilding industry to recover and operate sustainably until China's unfair policies are addressed. The Petition urges the administration to assess a port fee on Chinese-built ships that dock at a U.S. port, create a Shipbuilding Revitalization Fund to help the domestic industry and its workers compete, and take other policy measures to stimulate demand for, and the capacity to construct, commercial vessels built in the United States. The commercial shipbuilding and repair industry in the United States can compete and grow if the massive market distortions that the Government of China has created are remedied. The restoration of America's commercial shipbuilding industrial base will create high-skilled jobs, drive demand for key upstream technologies and inputs, and ensure a sufficient domestic fleet to safeguard national security. Section 301 is the right tool at the right time to counteract China's predatory and destructive practices, rebuild a vibrant domestic shipbuilding industry and supplier base, and protect America's economic and national security for years to come.

USTR Mistakenly Blames China for Long-Standing US Shipbuilding Woes

By Colin Grabow, Cato Institute

Last March, several unions submitted a petition to the US Trade Representative (USTR) requesting that it, acting under section 301 of the Trade Act of 1974, address alleged "unreasonable and discriminatory acts, policies, and practices" by China aimed at dominating the maritime, logistics, and shipbuilding sectors. The petition claimed that such policies burden and restrict US commerce—language that, if confirmed by a USTR investigation, would clear the path for tariffs or other trade restrictions.

In April, following vows from US Trade Representative Katherine Tai and President Biden that the petition would be examined thoroughly, the USTR announced that it would proceed with an investigation. Approximately nine months later and only days before the Biden administration left office, the USTR released its report rendering judgment on the matter. China's policies, it found, were both unreasonable and a burden and restriction on US commerce.

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In making this determination, the USTR has set the stage for the Trump administration to impose fresh punitive trade measures on Beijing. The contours of such action are unclear. Tariffs would seem one obvious response given President Trump's enthusiasm for import duties, but there are other possibilities as well.

Indeed, one idea floated in last year's petition was a fee on every Chinese-built ship that visits US ports, the proceeds of which would be funneled into a proposed US Commercial Shipbuilding Revitalization Fund. An example given was a $1 million port fee on a 20,000 TEU container ship. The impact of such a fee, whose use is unprecedented, is unclear. At least theoretically, carriers could avoid the penalty by swapping their Chinese-built ships with those constructed in other countries that are currently deployed on non-US trade routes.

Before the Trump administration imposes new tariffs, the proposed port fee, or some other measure, incoming officials may want to take a fresh look at the new USTR report. While it provides voluminous documentation of Chinese market abuses and accurately notes the depressed state of the US shipping and shipbuilding industries, it fails to establish any causal relationship between the two.

Instead, the report's findings are based on scant relevant evidence and questionable logic. Rather than first establishing facts to inform a carefully considered judgment, the USTR report smacks of a document hastily released to advance a predetermined conclusion beneficial to the outgoing administration's political allies.

Even the report's press release betrays a lack of diligence. In it, US Trade Representative Tai states that the United States currently ranks 19th in the world in commercial shipbuilding, while in 1975, it ranked number one with an annual production of over 70 ships.

None of these numbers is correct.

In 2023 (the most recent year for which data are available), the United States ranked 14th. Notably, Tai's 19th place figure is mirrored in the 2024 petition's first page (the US position in 2015), while her own USTR report placed the US at 16th (the US position in 2022). As for US performance in 1975, that year's US Maritime Administration's annual report shows the United States ranked twelfth—a far cry from first place—with 20 ships delivered.

Tai's inaccurate numbers are sloppy, but they're small beer compared to the report itself, which—while mangling some facts of its own—fundamentally errs in concluding that China plays a meaningful role in US maritime misfortunes. For example, according to the report, "*China's targeted dominance of the maritime, logistics, and shipbuilding sectors*" is a key factor that contributes to the United States' inability to maintain sufficient shipbuilding capacity to

- *"carry the waterborne domestic commerce and a substantial part of the waterborne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of the waterborne domestic and foreign commerce at all times."* (page 4)
- *"maintain sufficient domestic shipbuilding, shipping, and logistics capacity to sustain US commerce, as directed by US law."* (page 63)

In addition, the report asserts that China's dominance in this area *"burdens or restricts US commerce because it undercuts business opportunities for and investments in the US maritime, logistics, and shipbuilding sectors…"* (page 116)

The core flaw in the USTR's causal argument is that US shipping and shipbuilding firms aren't merely uncompetitive with China; they're uncompetitive with every country of maritime significance. If China's maritime industries ceased operations today, their business would simply shift to other countries with competitive shipping and shipbuilding firms — a group that decidedly *does not* include the United States.

For all the teeth-gnashing about China, US shipbuilders' lack of competitiveness is such that their output trails that of even much smaller countries such as the Netherlands and Norway.

Despite this, the USTR report places considerable blame on China for US maritime travails. It states, for example, that in the year 2000 "glimmers of hope" had begun to appear for the US shipping and shipbuilding industries, but that—like other sectors of the economy—they fell victim to the so-called "China shock" stemming from the country's 2001 accession to the World Trade Organization. As the report states:

> *A number of US shipyards have been forced to close as cheap Chinese ships have flowed into the global market. For example, Bender*

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> *Shipbuilding in Mobile, Alabama declared bankruptcy and was sold in 2009, and delivered its last ship in 2012. Avondale Shipyards in New Orleans, Louisiana announced it was closing in 2010 and delivered its last ship in 2014. US shipbuilding employment has seen a corresponding impact. From 2008 to 2021, the number of shipbuilding and repair production workers in the United States fell by 14.9 percent and the number of production hours worked fell by 19.5 percent.*

Later, the report quotes Scott Paul, the president of the union-aligned Alliance for American Manufacturing, stating that "US shipbuilding production has declined as artificially low prices of ships flood the market. China's unfair production practices have made it impossible for American shipbuilders to compete on an even playing field."

But the global market has little bearing on the fortunes of uncompetitive US shipbuilders, who have long subsisted on the protected Jones Act market for commercial vessels and military sales reserved for domestic shipyards. Indeed, a 2023 Congressional Research Service brief noted that no large US-built ship has been sold to an overseas buyer in *decades*, while a 1992 US International Trade Commission report noted that the US shipbuilding industry "had not produced a commercial vessel for export (that is, to be foreign-flagged) since 1960."

The Avondale and Bender shipyards cited by the USTR report offer good examples of the lack of exposure to international competition (itself a notable contributor to the industry's problems). For at least 30 years before its closure, the Avondale shipyard exclusively built ships for Jones Act and defense customers (and, before being defunded in 1981, a federal shipbuilding subsidy program). Bender was similarly dependent on building vessels for a captive domestic commercial market as well as occasional Navy contracts.

Put simply, neither Avondale nor Bender lost contracts to Chinese firms (or any foreign shipyard) because *they never competed with them*.

Beyond claims that China has contributed to US maritime struggles since 2000, the USTR report also alleges that Chinese policies are hindering efforts to revitalize the US maritime industry. It credulously quotes, for example, a letter from the Shipbuilders Council of America holding Chinese subsidies responsible for an inability of "private-industry US shipyards to compete for contracts to build or repair ships for international commerce."

To substantiate these claims, the report offers the example of specialized vessels to construct offshore wind turbines. As it states:

> *Despite this strong demand signal [for offshore wind vessels], few US vessels are in development or construction. For example, while the [National Renewable Energy Laboratory] report indicates that four to six wind turbine installation vessels are needed, only one purpose-built offshore wind installation vessel has been launched in the United States. This is in part due to China's flooding the market with offshore wind installation vessels, which decreases US shipyards' perceived cost competitiveness and artificially restricts the ability of shipowners to compete for available work.*

Such language creates the impression that, but for China, US shipyards could compete in the construction of highly sophisticated wind turbine installation vessels. But such an outcome beggars belief as US shipyards can't compete with other foreign shipbuilders that construct WTIVs either.

While the report highlights the construction of a wind turbine installation vessel for $715 million in the United States compared to $400 million for a "similar" vessel in China, it neglects to mention that a South Korean shipyard contracted to build the exact same model vessel as the one currently under construction in a US shipyard for $330 million—less than half the US price and less than the China price.

Thus, even in China's absence, vastly uncompetitive US shipyards would still be out in the cold.

Perhaps with this in mind, the report attempts to justify its finding by employing yet another argument. Beyond alleged past and current damage inflicted, the report claims that Chinese targeting of the maritime and shipbuilding sectors for dominance *"burdens or restricts US commerce because it creates economic security risks from dependence and vulnerabilities in sectors critical to the functioning of the US economy."*

A disparate set of facts are mustered to substantiate this claim. The report points out, for example, that 22 percent (hardly an overwhelming number) of the non-US flagged ships that entered US ports in 2022 were Chinese-built.

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This fact is soon followed by the assertion that "Over-reliance on a single economy for shipping, shipbuilding, and logistics increases the cost of any disruption," and a digression into the costs of disruptions to shipping in the Red Sea, their knock-on effects, and a claim that similar disruptions in the South China Sea could cause a $5 trillion decline in global GDP.

How this relates to Chinese subsidies in shipbuilding and related maritime industries, however, is a mystery. Would a Red Sea-style shipping disruption be less damaging if the vessels involved were constructed outside of China? The report never says.

The report is perhaps on firmer ground with its argument that China's shipbuilding dominance could allow it to prioritize the orders of Chinese and other shipowners over those of US shipowners. Even so, this is a hypothetical outcome rather than one borne out in practice. Furthermore, Chinese shipyards still aren't the only game in town with numerous capable shipyards remaining in South Korea, Japan, and elsewhere.

Such odd argumentation feeds a sense that the report's conclusion was determined long before evidence was compiled, with much argumentative pasta flung at a wall in the hope that some would stick. That the report's sources include an op-ed published just 48 hours before the report's release only adds to such suspicions.

To be clear, the report's flaws do not absolve China of distorting the global maritime market. That Beijing lavishes substantial subsidies on its shipping and shipbuilding industries is well documented. But the real question is whether such policies have even the slightest explanatory power for the US shipping and shipbuilding industries' moribund state and lack of competitiveness — a situation that long predates China's maritime rise.

The answer is a clear no.

The incoming Trump administration's temptation to seize on the new USTR report as a justification for new tariffs or other trade restrictions on China will no doubt be great. But if administration officials seek to reverse US maritime fortunes, their time would be better spent examining possible reforms to address US policy failures than blaming others for long-standing ills.

"Over? Did You Say 'Over'?" Determining the Preclusive Effect of an Earlier Arbitration Award*

By Daniel Lund, III, Partner, Phelps Dunbar LLP, New Orleans, Louisiana

In *Nat'l Cas. Co. v. Cont'l Ins. Co., 2024 U.S. App. LEXIS 29826 (7th Cir. Nov. 22, 2024)*, the United States Seventh Circuit Court of Appeals recently held that under the Federal Arbitration Act, an arbitrator – and not a court – is to determine the preclusive effect of an arbitrator's earlier ruling.

In the case, insurers engaged in three reinsurance agreements had previously arbitrated concerning one of the insurer's billing methodologies. When a similar dispute occurred years later, the victors in the first arbitration – rather than pursuing arbitration – filed in federal court in Chicago seeking to have the court declare that the prior arbitration award precluded re-arbitration of the latest dispute. The insurer on the other side of the dispute moved to compel arbitration, a motion granted by the district court. The plaintiff insurers appealed.

The Court of Appeals affirmed: "Our case law establishes that the preclusive effect of an arbitral award is an issue for the arbitrator to decide, not a federal court. In no uncertain terms, we have held that '[a]rbitrators are entitled to decide for themselves those procedural questions that arise on the way to a final disposition, including the preclusive effect (if any) of an earlier award.' ...

"Indeed, the Court has repeatedly instructed that, under the FAA, arbitrators presumptively decide procedural issues that 'grow out' of an arbitrable dispute and 'bear on its final disposition.' ... Preclusion is one such procedural issue that can grow out of an arbitrable dispute. ... [T]he relevant presumption here [is] that procedural questions growing out of arbitrable disputes are themselves arbitrable. ... To our knowledge, no court has ever interpreted § 13 [of the FAA, declaring that an arbitration award "shall have the same force and effect, in all respects as, and be subject to all the provisions of law relating to, a judgment in an action"] to require federal courts to determine the preclusive effect of arbitral awards."

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Interestingly, the Seventh Circuit panel did not offer to circumscribe the list of appropriate arbitrators to the arbitrator or panel of arbitrators which decided the original dispute, citing at least one case which declared that, "[T]he question of the preclusive force of the first arbitration is, like any other defense, itself an issue for a subsequent arbitrator to decide."

Arbitrators, as well as the parties which arbitrate before them, understand that the form of an arbitration award may be as simple as "calling balls and strikes" – naming the winner and the loser on particular issues – to as complicated as a fully "reasoned" award, outlining the actual findings and reasons for every aspect of an arbitrator's decision. At the same time, the official "record" of arbitrations – including whether arbitration hearing testimony is transcribed – varies significantly case to case, depending on the wishes of the parties to the proceeding. Hence, parties in arbitration concerned about the future reopening of similar disputes with the same opponents should carefully consider how the initial arbitration record is put together by the parties and the arbitrator(s)/arbitration agency.

* This article was first published and posted on LinkedIn in December 2024 and is being republished here with permission. https://www.linkedin.com/posts/daniel-lund-10823a3_arbitration-sweethomechicago-activity-7269748126670819328-UUtd?utm_source=share&utm_medium=member_desktop&rcm=ACoAAAMAgVsB0L7fFML1ESUJm6DPKHjom_X0N4s

Honours Even in Latest English Litigation on *The Prestige* and the Spanish Supreme Court Judgment*

By Simon Baughen, Professor of Shipping Law, Swansea University, U.K.

In October 2023, [2023] EWHC 2473 (Comm), Butcher J refused recognition of the judgment of the Spanish Supreme Court against the London P&I Club, and allowed equitable compensation to the Club in the event that Spain sought to enforce the judgment in any other jurisdiction, [2023] EWHC 2473 (Comm), with a similar finding as regards equitable compensation as regards France [2023] EWHC 2474 (Comm). On 12 December 2024 the Court of Appeal has now had its say. In *The Kingdom of Spain v The London Steam-ship Owners' Mutual Insurance Association Limited* and *The French State v The London Steam-ship Owners' Mutual Insurance Association Limited* [2024] EWCA Civ 1536 it was presented with five distinct appeals grouped into three categories: the Brussels Appeal, the Arbitration Appeals, and the Human Rights Appeal.

(i) The Brussels Appeal (CA-2024-000178)

Spain appealed against the decision of Butcher J that its judgment for €855,493,575.65, obtained by Spain against the Club in the Spanish courts, should be registered and enforced in England under the Brussels I Regulation 2001. Spain argued that the Spanish judgment must be enforced based on the principles of mutual trust under EU law. However, the Club contended that:

1. The Spanish judgment was irreconcilable with the binding arbitration awards ("Mr. Schaff's awards") and subsequent English judgments entered under section 66 of the Arbitration Act 1996.
2. Recognition would violate English public policy under Article 34(1) of the Brussels I Regulation due to issue estoppel created by these prior judgments.
3. The CJEU's ruling in *The Prestige* ([2023] 1 WLR 1) erred in its interpretation of Article 34(3) and the concept of irreconcilable judgments.

The Court of Appeal, where the principal judgment was given by Sir Geoffrey Vos MR, held that the judge erred in refusing to follow the CJEU's decision, based on the *lis alibi pendens* provision in Article 34(3) in respect of the prior section 66 judgment of Hamblen J. However, Hamblen J did not decide that his section 66 judgment was to be regarded as a "judgment" for the purpose of the irreconcilability provisions in article 34(3). He decided that it might be, and therefore there was utility in making a section 66 order, but he left the EU law decision for another day.

The CJEU had first decided [48]-[53], that a section 66 judgment was capable of being a "judgment" within the meaning of article 34(3). The

Judge and the Club took the view that this was sufficient to answer the questions the Judge had referred to it. However, at [48-73] the CJEU went on to add the following qualification that the position was different "where the award in the terms of which that judgment was entered was made in circumstances which would not have permitted the adoption, in compliance with the provisions and fundamental objectives of that regulation, of a judicial decision falling within the scope of that regulation". Such section 66 judgments could not be judgments that would be regarded in EU law as irreconcilable with the Spanish judgment. The Court of Appeal held that the Judge had been wrong in finding that, as was the case with the two arbitrators, he could disregard the caveat to the CJEU's finding as to the effect of a section 66 judgment for the purposes of article 34(3).

However, the Court of Appeal agreed that Mr. Schaff's awards created an issue estoppel that rendered recognition manifestly contrary to English public policy under Article 34(1) which resulted in a finding that the Spanish judgment should not be registered. The key question was whether failing to recognise the res judicata created by a binding arbitral award, such as Mr. Schaff's award, would "constitute a manifest breach of a rule of law regarded as essential in the legal order of the Member State". The Court of Appeal held that it would, just as the judge decided. Sir Geoffrey Voss MR gave four reasons for this finding:

> "[161]. First, there must be finality to litigation. Secondly, it is wrong as a matter of fundamental legal principle for the domestic courts to ignore and to allow parties to ignore arbitral decisions by which those parties have been finally held by the courts of competent jurisdiction to be bound. Thirdly, the regime of the New York Convention makes it clear that it would be wholly undesirable, as a matter of English public policy, to ignore Mr. Schaff's award. As the judge explained at [285] and [292], inconsistency should be avoided between the effect of the New York Convention and a domestic award. Article 73(2) of the Recast Regulation (the successor to the Brussels I Regulation) is explicit that it does not affect the application of the New York Convention, and that must also be the position under the Brussels I Regulation. Fourthly, the ability of international parties to agree to binding international arbitration is of great importance to the legal system in England and Wales and to the economy of the United Kingdom. That militates in favour of considering the res judicata or issue estoppel created by a binding arbitral award as essential in the legal order of the United Kingdom."

(ii) The Arbitration Appeals (CA-2024-000180, CA-2024-000182, CA-2024-000597)

The Arbitration Appeals arose from the awards made by two arbitrators, Sir Peter Gross and Dame Elizabeth Gloster, in proceedings initiated by the Club against Spain and France, respectively. Both arbitrators concluded that Spain and France had breached an equitable obligation to arbitrate their claims against the Club, resulting in awards for equitable compensation by way of indemnities against future violations of the obligation to arbitrate by seeking to enforce the Spanish Supreme Court in a jurisdiction other than England. The Court of Appeal held that equitable compensation is not an available remedy for breach of an equitable obligation to arbitrate, as this would extend equitable principles beyond established categories. The appropriate remedies would be an anti-suit injunction or a declaration of non-liability. Although damages could be given in lieu of an injunction under s.50 of the Senior Courts Act 1981 this would not be the case where a State enjoyed immunity from injunctive relief under s.13(2) of the State Immunity Act 1978. There has to be power or jurisdiction to grant an injunction before equitable damages under section 50 are available.

Equitable compensation could not be used to short circuit, for sovereign states, the well-established approach adopted under section 50. The primary remedy for the breach of an equitable obligation to arbitrate is an injunction, not compensation, and the rationale for an award of damages under section 50 is that they compensate for the refusal of an injunction or for losses incurred at a time before injunctive relief was sought. Moreover, the conditional benefit principle did not give rise to a cause of action of a conventional kind.

Sir Geoffrey Vos MR went on to explain that even if equitable compensation could be awarded for breach of an obligation to arbitrate, it could not extend to all the consequences of a breach of a pay to be paid clause, which did not form the basis of the

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claim made by the Club – proceeding in violation of the arbitration clause.

(iii) The Human Rights Appeal (CA-2024-000588)

In 2021 the Club had argued before Butcher J that the Spanish judgment should not be enforced on human rights grounds, namely: violations of Article 1 of Protocol 1 (A1P1) and Article 6 of the European Convention on Human Rights (ECHR), as the Spanish courts made arbitrary findings and decided new facts at the appellate stage without proper procedural safeguards; and breach of Article 14(5) of the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to review by a higher tribunal.

The Club maintained that these violations rendered recognition of the Spanish judgment manifestly contrary to English public policy under Article 34(1) of the Brussels I Regulation. Spain argued that the judgment was compliant with EU principles and should not be reviewed substantively under Article 36 of the Brussels I Regulation. Spain argued that these claims were inadmissible under Article 36 of the Brussels I Regulation, which prohibits substantive review of foreign judgments.

Butcher J found that the Spanish judgment did not violate English public policy on human rights grounds, [2021] EWHC 1247 (Comm). The Court of Appeal agreed and dismissed the Club's appeal.

In conclusion, Spain is not going to have its judgment registered in England, but neither it nor France will be subject to the indemnities decreed by the arbitrators if they attempt to enforce it in any other jurisdiction. A one-all draw.

But maybe there will yet be extra time in the Supreme Court.

* This article was originally published on 16 December 2024 in a blog of the Institute of Shipping and Trade Law, Swansea University and is republished here with permission.

Damages for Late Redelivery under a Time Charterparty – *Hapag-Lloyd v (1) Skyros Maritime Corporation (2) Agios Minas Shipping Company* [2024] EWHC 3139 (Comm)*

By Monika Humphries-Davies, Managing Associate, Stephenson Harwood, Dubai, UAE

In a recent Commercial Court case *Hapag Lloyd AG v Skyros Maritime Corporation and another,* the Court was asked to consider whether owners of two vessels were entitled to substantial damages for late redelivery of the two ships under time charterparties, where there was no evidence that after timely redelivery, the owners could, or would, charter them out, and held that in such a scenario the owners were only entitled to nominal damages.

Facts

Skyros Maritime Corporation and Agios Minas Shipping Company ("Owners") had chartered vessels MV SKYROS and MV AGIOS MINAS (the "Vessels") to Hapag-Lloyd AG ("Charterers") on two materially identical time charterparties on the NYPE form (the "Charterparties"). By the terms of the Charterparties, the latest times when the Vessels could lawfully be redelivered were 24:00 on 30 May 2021 (SKYROS) and 24:00 on 31 May 2021 (AGIOS MINAS). Before these dates, Owners entered into Memoranda of Agreement dated 22 April 2021 and 23 March 2021 (the "MOAs"), agreeing to sell the Vessels to MSC Shipping SA and Maersk A/S (the "Buyers"). Under the terms of the MOAs Owners agreed not to enter into further charterparties before delivering the Vessels to the Buyers.

In breach of the Charterparties, both Vessels were redelivered late by Charterers: SKYROS by about two days and AGIOS MINAS by about seven days. Owners' position was that the last voyage orders were illegitimate, meaning ones which could not

have been completed within the agreed charter period. Charterers contested this, but nothing turned on this point, as Owners had chosen to accept these orders. During the overrun periods, Charterers paid hire to Owners at the charterparty rates. However, the market rates for the overrun period were significantly higher than the charterparty rates.

It was common ground between the parties that even if the Vessels had been redelivered timeously, Owners would not have chartered them out again after redelivery and the Vessels would have been delivered to the Buyers as soon as they were redelivered.

Owners commenced arbitration proceedings, claiming that Charterers had breached the Charterparties by failing to timely redeliver the Vessels and seeking damages for the difference between the charterparty rates and the market rates for the overrun period.

Preliminary issues in the arbitration

As a preliminary issue, the arbitrators were asked to decide whether Owners were entitled to recover from Charterers substantial damages, compensation, remuneration or other monetary relief, which is what Owners were seeking, or only nominal damages, which was Charterers' position.

The arbitrators decided that Owners were entitled to substantial damages. Charterers appealed the arbitrator's finding to the Court.

Commercial Court Decision

Charterers argued that Owners were not entitled to such damages because Charterers' breach had not caused Owners any loss, because Owners would not have been able to relet the Vessels and take advantage of the higher charter rates because of the terms of the MOAs. Charterers relied on the well-known compensatory principle underpinning the rationale for assessment of contractual damages, which provides that the basic measure of contractual damages is to put the innocent party so far as money can do in the same situation as if the contract had been performed. In the present case, if there had been no breach, Owners would not have been any better off in monetary terms.

Whilst Owners did not contend that they would have been better off in monetary terms if there had been no breach, they argued that as a matter of legal principle they were entitled to claim the difference between the charter rate and the market rate, arguing that the MOAs should be disregarded.

The Court noted that it is generally accepted that the normal measure of damages for late redelivery is the difference between what owners earn in hire under the charter during the period of the overrun and the market price, if the market rate is higher. If the market rate rates are lower than the charter rate during the overrun period, charterers would still have to pay the charter rate for the overrun period.

The Court dismissed all of Owners' arguments:

i) On quantum meruit, a principle of restitution/ unjust enrichment which comes into play where services are rendered without any agreement as to their remuneration, the Court said that this could not apply, because Owners' claim was for breach of the redelivery obligation under the Charterparty and hire at the charterparty rate was being paid.

ii) On user damages, a principle concerning assessment of damages that a person who has wrongfully used another's property without causing the latter any pecuniary loss may still be liable to that other party for more than nominal damages in a reasonable sum for the wrongful use made from others' property. This was not applicable as Charterers' use of the Vessel was not wrongful.

iii) On negotiating damages, which are damages assessed by reference to the sum that the claimant could hypothetically have negotiated from the defendant in return for releasing him from the obligation that he has failed to perform, the Court said that this was not applicable as the breach of redelivery obligation did not result in a loss of a valuable asset.

The Court allowed Charterers' appeal and concluded that Owners were only entitled to nominal damages because they did not suffer any actual loss due to Charterers' breach and whilst the normal measure of damages is the difference between the charter and market rate for the overrun period, each case will turn upon the terms of particular terms of the charter in question and the underlying facts.

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Comment

This Judgment is a good example of the Court upholding the compensatory principle in the assessment of damages and that damages for the late redelivery can be sought where there is an actual loss and not a hypothetical loss.

In addition to considering different types of damages the Judgment also included a thorough analysis of principle of remoteness and, whilst the underlying dispute did not concern non-delivery or late delivery of goods, given some of the arguments made by the parties were advanced in reliance of case law dealing with non-delivery or late delivery of goods, the Judgment makes an interesting read to anyone interested in that.

Please click here for a copy of the full judgment.

* This article was first published in the January 2025 edition of Stephenson Harwood's *Commodities In Focus Weekly* – Issue 110, and is republished here with permission. https://www.shlegal.com/docs/default-source/news-insights-documents/2025/cif-weekly-110.pdf?sfvrsn=671edf5b_0

In re Bulk & Metal Transport PTE Ltd., as Disponent Owner of the M/V BI JIA SHAN, v. Consolidated Grain & Barge Co., as Charterer

S.M.A. Panel Confirms that the U.S. Supreme Court's The *Athos I* Decision Permits Safe Berth Obligations to Be Contractually Allocated Among the Parties and Finds a Disponent Owner Responsible for Tugs and Standby Pilots Required Due to High River Conditions As a Result of Relevant Contractual Language of the Charter Party

By Jason Waguespack, Managing Director, Andrew Waters, Director, and Fraser Mitchell Law Clerk, of Galloway, Johnson, Tompkins, Burr & Smith, New Orleans, Louisiana

This matter arose out of a dispute between Bulk & Metal Transport Pte. Ltd. (the "Owner") and Consolidated Grain and Barge Co. ("CGB" or the "Charterer")[1] regarding whether the owner of a vessel chartered to CGB could recover costs incurred in connection with the use of hold-in tugs and standby pilots during the discharge of cargo while the vessel was anchored at the duly nominated and agreed discharge port in Belle Chasse, Louisiana.[2] The Panel, composed of Louis Epstein (as Chairman), Charles B. Anderson, and LeRoy Lambert, denied the Owner's claim for the disputed sum of $89,427.58, which included the total fees and costs for the standby pilots and hold-in tugs, and further ordered the Owner to pay CGB's fees paid to the arbitral Panel in addition to $25,000, which represented approximately half of CGB's attorneys' fees incurred.[3]

The Parties entered into a voyage charter for the carriage of approximately 56,000 MT of rock salt in bulk on a GENCON 1994 form dated May 23, 2019.[4] The charter contemplated carriage of the cargo from "1 safe berth always afloat [in] Damietta[, Egypt]" to "1 or 2 safe anchorage always afloat LaPlace[, Louisiana,] Mississippi River USA."[5] Pertinently, the charter's Rider Clause 23.10, provided as follows:

> Owners to confirm vessel suitable for all port restrictions at both ends.
>
> Owners to satisfy themselves about all restrictions (port/berth/tide/draft/LOA/beam/flag, etc) at all ends.
>
> *Owners guarantee safe arrival draft at disports, failing which, any lighterage or consequential expenses to be at Owners risk and account.*[6]

The Panel further emphasized that the charter contained an additional provision under which the Owner was required to *"check and satisfy themselves about restrictions"* with respect to the nominated port of discharge.[7]

On or about May 1-2, 2019, the Board of River Port Pilots Commissioners, Port of New Orleans, Safe Navigation Committee issued an updated "High River Advisories to River Pilots" with recommendations that vessels would be required to have a pilot aboard until the vessel could stay in position without tug, steering, or engine assistance (the "High River Advisory").[8] On June 19, CGB was informed by its discharge port agents that any vessel with a draft of 35 feet or greater anchoring in the New Orleans Baton Rouge Steamship Pilots Association's district would be required to have a pilot aboard at all times. Subsequently, on July 5, the parties agreed to change the discharge port from LaPlace, Louisiana, to Belle Chasse, Louisiana, after being informed by the discharge port agents of the relevant restrictions, port information, and fees that would apply at LaPlace.[9] Critically, the High River Advisory and accompanying requirements also applied to both the original discharge port, LaPlace, and the newly selected discharge port, Belle Chasse.[10]

The vessel's arrival draft was approximately 42.979 feet, which exceeded the maximum transit draft of 40 feet recommended by the Louisiana Maritime Association at that time.[11] According to the master, after the vessel was secured and discharge operations had begun, the vessel continued to sway despite the mooring lines having been secured and both anchors having been dropped.[12] Although the parties disputed who ordered them, standby pilots and hold-in tugs were required to prevent the vessel from swaying from June 17-19.[13] On July 19, the maximum allowed draft of the Southwest Pass was increased to 43 feet, effective 1145 hours.[14] Between 12:00 and 12:25 P.M. that day, the hold-in tugs were released, and at 12:06 P.M., the standby pilots disembarked.[15] The parties disputed whether the Owner or CGB should bear responsibility for the $89,427.58 in tug and pilot expenses, and CGB paid the disputed sum under protest on August 8.[16]

The ultimate issue was whether the Owner or CGB was responsible for paying the costs associated with the required additional hold-in tugs and standby pilots, and the charter did not contain any specific provision allocating such costs to either party.[17] The Owner relied heavily on the U.S. Supreme Court's decision in *Citgo Asphalt Ref. Co. v. Frescati Shipping Co. (The Athos I)* and contended an absolute warranty of safety existed.[18] The Owner further argued that the need for standby pilots and tugs to hold the vessel in place rendered the discharge berth unsafe and breached such a putative warranty.[19] However, at various points, the Panel clarified that *The Athos I* permits parties to contractually allocate the extent of their respective obligations related to the nomination of a safe berth.[20] In setting forth the universally understood definition of a safe berth or port, the Panel stated that a "port will not be safe unless, in the relevant period, the ship can reach it, use it and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship."[21] The Owner argued that the necessity of hold-in tugs and standby pilots demonstrated that the berth was unsafe and, accordingly, that CGB were in breach of the charter's alleged warranty of a safe berth.[22] The Panel acknowledged that a split exists between English court decisions and U.S. Society of Maritime Arbitrators, Inc. ("SMA") arbitral decisions on the question of whether, in the absence of an express allocation, the costs of extra hold-in tugs should be borne by the vessel owner or by the charterer.[23]

However, it was unnecessary to resolve this split because the U.S. Supreme Court's decision in *The Athos I* permits the express language of the relevant charter to modify the scope of the parties' obligations with respect to the nomination of a safe berth.[24] The clear and unambiguous language of Rider Clause 23.10 to the charter mandated that the Owner was required to "satisfy themselves" about relevant restrictions at the discharge port and thus, the Owner knew or should have known

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about the draft restrictions at the newly nominated discharge port of Belle Chasse, Louisiana, and that the use of hold-in tugs may have been required.[25] As set forth above, additional language in Rider Clause 23.10 provided that the Owner *"guarantee[d] safe arrival draft as disports, failing which, any lighterage or consequential expenses to be at Owners risk and account."*[26]

Ultimately, the Panel declined to address the split between English cases and SMA arbitral decisions regarding the responsibility for tug and pilot expenses needed at the discharge berth in the absence of an express contractual allocation to this effect because the express language of the relevant charter constituted a limitation of CGB's obligation to nominate a safe berth and obligated the Owner to bear the costs incurred as a result of the vessel's excessive draft upon arrival at the discharge port, which it knew or should have known was subject to the High River Advisory in the prevailing conditions, placing the Owner in breach and rendering it responsible for all consequential costs and expenses.[27]

1 *In re Bulk & Metal Transport PTE Ltd., as Disponent Owner of the M/V BI JIA SHAN, v. Consolidated Grain & Barge Co., as Charterer,* S.M.A. No. 4478, May 22, 2024 (Epstein, Louis (Chair), Lambert, LeRoy, and Anderson, Charles B.), 2024 WL 5326141 (the "Award"). Galloway, Johnson, Tompkins, Burr & Smith represented the Charterer, CGB in this matter.
2 *Id.* at 1-2.
3 *Id.* at 24.
4 *Id.* at 4.
5 *Id.*
6 *Id.* at 4-5 (emphasis added in the Award).
7 *Id.* at 5 (emphasis added in the Award).
8 *Id.*
9 *Id.* at 6.
10 *Id.*
11 *Id.* at 8.
12 *Id.* at 8-9.
13 *Id.*
14 *Id.* at 10.
15 *Id.* at 10.
16 *Id.* at 13.
17 *Id.*
18 589 U.S. 348 (2020).
19 *See* the Award, at 14.
20 *Id.* at 13.
21 *Id.* at 14 (citing *Leeds Shipping Co., Ltd v. Société Française Bunge (The Eastern City)* [1958] 2 Lloyd's Law Rep. 127).
22 *Id.* at 14.
23 *Id.* at 18.
24 *Id.* at
25 *Id.* at 20.
26 *Id.* at 21 (emphasis added in the Award).
27 *Id.*

SMA Award Service ... At-a-Glance

The M/V BI JIA SHAN: Disputed Costs for Hold-in Tugs, and A Shipbroker's Perspective

By Robert C. Meehan, Manager Chemical Dept., McQuilling Partners, and SMA Vice-President

The preceding article summarized the recent award issued in *The BI JIA SHAN,* SMA No. 4478 (May 22, 2024) (Anderson, Lambert, Epstein, Chair), which addressed a dispute between the vessel owner and its charterer for the responsibility and cost of using hold-in tugs and standby pilots at discharge ports on the Mississippi River (La Place and Belle Chasse), amounting to $89,427.58. The parties disagreed on who ordered these additional services. The agent stated the Master made the decision, whereas the Master said the pilots and port authorities decided. Further, the owner asserted that the agent did not inform them of the local regulations and that, as the charterer appointed the agent, the charterer should be liable for the disputed sum.

The owner asserted the charterer was liable, citing that the discharge berth was unsafe unless the pilot remained on board and a hold-in tug was used. The owner's contention relied heavily on the U.S. Supreme Court decision in *Citco Asphalt Ref. Co. v. Frescati Shipping Co. [ATHOS 1],*[1] in which the court held that similar safe berth language in a charter party constituted an absolute warranty of safety. The charterer disagreed, saying the charter party contained specific clauses providing that the owner was responsible for the cost. The decisive charter party clauses highlighted by the charterer were Clause 21 'Agents' stating in material part that *"Charterers agents at loading and discharging port"* and *"at discharge, owners to check and satisfy themselves about restrictions,"* and Rider Clause 23:10 'Owner Responsibility' which read: *"Owners*

to confirm vessel suitable for all ports at both ends. Owners to satisfy themselves about all restrictions [port/berth/tide/LOA/beam/flag, etc] at all ends. Owners guarantee safe arrival draft at all disports, failing which, any lighterage or consequential expenses to be at owners risk and account."

The panel ruled in favor of the charterer and held that the owner was responsible for the disputed costs. In doing so, the panel viewed the expense of the hold-in tugs and pilots during part of the Vessel's call at the Terminal as a direct and consequential expense of the Vessel exceeding the maximum draft. The panel further concluded that the owner knew or should have known in advance of the draft restrictions at the Terminal, that the use of tugs might be required and that, under Rider Clauses 21 and 23.10, the owner was obligated to satisfy itself about restrictions at the discharge port and undertook to comply with them "to guarantee safe arrival draft at disports." The panel also rejected the owner's *ATHOS I* argument and highlighted that the Supreme Court in that decision also pointed out that *"charterers remain free to contract around unqualified language that would otherwise establish a warranty of safety by expressly limiting the extent of their obligations or liability."* The panel ruled that the *M/V BI JIA SHAN* charter party contained such express language limiting charterer's obligation or liability by the parties' agreement to insert the above two clauses. Based on the foregoing, the panel denied the Owners' claim for the disputed sum.

Disputes involving hold-in tug and pilot costs for vessels calling at Mississippi River ports, such as the one decided by the *BI JIA SHAN* panel, have become more common lately and having a clear allocation of such risks in the charter party is crucial to achieve reasonable expectations between the parties and avoid future disputes. Anyone negotiating contracts appreciates that the process is about managing risk through compromise. Most negotiations involve requirements that do not align, with each party seeking the most favorable terms. Not surprisingly, the negotiation process often includes adding, deleting, or amending provisions concerning events for which a party is not responsible or only partly responsible. Negotiating from weakness or time pressure, overlooking provisions, or less-than-honorable behavior all contribute to the risk the parties assume in the final agreement.

Based on my experience as an active shipbroker in the chemical tanker/parcel trade, it has become commonplace for the owner to insist that any charter party involving a load port or discharge port in the Mississippi River must include a clause specifying that the charterer bears the expense for additional pilots and/or tugs. In the past, the owner's insistence on adding such a clause was limited to spring operations when the current in the Mississippi River is the strongest, resulting from the melting snow in the northern states. However, it is now very common for the owner to demand inserting such a clause throughout the entire year. Further, all terminals on the Mississippi River have provisions requiring extra pilots and hold-in tugs when the water levels reach a certain point. The challenge is that the terminals never order additional services because, by doing so, they accept responsibility for payment. Ultimately, the decision falls on the charterer, who begrudgingly accepts the clause (and with it, the responsibility), risking and hoping that additional pilots and tugs will not be required.

The wording of Clauses 21 and Rider Clause 23:10 in the *BI JIA SHAN* matter was very broad, and, as interpreted by that panel, it essentially transferred the safe berth obligation from the charterer to the owner. Although the owner perhaps overlooked the significance of its agreement to these obligations during the negotiation for that charter party, it had a second opportunity to review any restrictions when the charterer requested to amend the discharge berth from La Place to Belle Chasse. However, the owner failed to do so.

Considering the heightened publicity surrounding the need for additional pilots and tugs, one would be challenged today to successfully negotiate with a tanker owner provisions similar to those in the *BI JIA SHAN* imposing obligations upon the owner to ascertain and comply with draft limitations. On the off-chance that a charterer was successful, the owner would likely insist on adding "at time of fixing" wording, potentially rendering the clause moot.

In *The BI JIA SHAN,* the owner cited some SMA decisions holding the charterer responsible, concluding that if additional pilots and tugs are essential in determining the safety of the berth, then the cost for those additional services is for the charterer's account. However, most of the cited awards were

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distinguishable in that they lacked express wording, limiting the extent of charterers' obligations or liability.[2]

The parties' fundamental objective at the onset of any charter party negotiation is reasonable expectations of performance. As previously stated, most negotiations involve requirements that do not align and the issue of which party bears financial responsibility if the charterer's nominated berth requires additional pilots and tugs is no exception. These additional services often exceed $100,000.00, so it is not an issue easily overlooked. Deciding not to include a charter party clause specifically addressing this issue and allocating the costs of hold-in tugs will likely lead to a dispute which may eventually find its way into arbitration.

For charterers, agreeing to merely add a clause stating that the charterer shall bear the cost of additional pilots and tugs is not prudent. For instance, the charterer may be exposed by an owner arbitrarily ordering the services as they are not responsible for the cost. The crux of the matter is the possibility that the charterer-nominated berth is unsafe without additional pilots and tugs. Deciding whether a berth is safe for the contracted vessel falls on the pilots, port authorities, vessel master, and the terminal itself. Unless, for example, the charterer owns the terminal, the charterer usually lacks the expertise to decide whether the berth is safe. Yet, many times, it is the party penalized for the berth being unsafe.

Usually, the charterer's contract with its Supplier or Receiver provides the charterer with a safe berth to receive or deliver the cargo. Acting in reliance on any berth information and restrictions it has received, the charterer typically incorporates those details into the charter party. As mentioned previously, it is rare for a Mississippi River terminal operator to highlight its provision requiring additional pilots and tugs if water levels reach a certain point. One remedy during negotiations would be drafting a clause that includes language that responsible parties, other than the charterer, considered the berth unsafe without additional pilots and standby tugs. I drafted the following clause to jumpstart any stalled negotiations: *"Due to possible high-water levels on the Mississippi River, for safety reasons, the pilots, port authorities, or the vessel Master may require standby pilots and hold-in tugs alongside the vessel while loading or discharging. If the Pilots, port authorities, or Master deem the berth unsafe unless the pilots and hold-in tugs are employed while the vessel is alongside, the vessel Master [Owner] shall notify the Charterer accordingly before hiring these services. The cost for any additional standby pilots and hold-in tugs shall be for the Charterer's account, and if the vessel is scheduled to the berth for the account of others, the cost shall be prorated among the cargo interests based on each cargo interest's percentage of the total tonnage handled at the berth."*

In my experience, tanker owners have readily accepted this proposed clause as it highlights the charterer's acknowledging its safe berth obligation and assuming responsibility to the owner for the cost of any standby pilots and hold-in tugs. The wording considers that it is not likely for the charterer to prevail with transferring the cost to the owner and instead shifts the safe berth obligation to the proper party. The clause also serves to strengthen the charterer's position in approaching its Supplier and Receiver for reimbursement of the cost of any additional pilots and tugs by asserting they failed to provide the charterer with a safe berth. Any claim is supported by authoritative parties other than the charterer deciding that the berth was unsafe. Whether the charterer wishes to pursue any claim for reimbursement -- some refer to it as biting the hand that feeds them -- is its decision. The purpose of the clause is to advance any stalled negotiations with the owner, contemporaneously offering the charterer a credible means toward reimbursement. Owner and charterer feedback so far has been positive.

1 589 U.S. 348 (2020).
2 In fact, the award cites ample precedent on both sides of the issue, including decisions from both the U.S. and England. *See, the BI JIA SHAN* Award, at ¶¶ 63-70. The Panel noted in ¶ 71 of the Award that it did not need to determine this issue or resolve the conflict among these cases because of the express language in the charter party.

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Focus on SMA Members

New Members

The SMA continues to broaden its membership with members from different professional backgrounds. Michael J. Mitchell and Jan P. Gisholt, featured below, were recently welcomed as new members of the SMA.

MICHAEL J. MITCHELL

Michael J. Mitchell is an experienced maritime professional with significant expertise in the tanker and dry bulk sectors. He currently serves as Senior Advisor to Energos Infrastructure, which owns and operates a fleet of LNG FSRUs and Carriers deployed throughout the world. He gained extensive chartering and operations experience as Head of Global Operations at Principal Maritime Management (crude and product tankers), and significant claims experience as General Counsel at Eagle Bulk Shipping Inc. (dry bulk) and The American P&I Club, and partner at Haight Gardner Holland & Knight. In addition, he has completed more than one hundred sale and purchase agreements and has participated in arbitrations and litigations around the world. He is also experienced with time and voyage charters, COAs, pooling agreements, cargo claims, salvage and wreck removal.

Michael has six years sea experience as deck officer aboard tankers and general cargo vessels (Unlimited Tonnage Chief Mates license), and is a graduate of the US Merchant Marine Academy and Boston College Law School.

JAN P. GISHOLT

Jan P. Gisholt has contributed significantly to the maritime industry over the course of several decades, combining his extensive background in law and commercial aspects of shipping. Since 2019, he has served as Vice President at SKULD North America, where he manages disputes related to FD&D, P&I, charter party, bill of lading, cargo loss/damage, and commodity sales contracts in both the dry cargo and tanker sectors.

Before his current role, Jan developed his maritime legal skills at Freehill Hogan & Mahar, LLP, where he worked from 2007 to 2019, starting as an Associate and later becoming a Partner. His expertise includes charter party, bill of lading, cargo loss/damage, as well as arrests and attachments. Prior to that, he was an Associate at Healy & Baillie, LLP from 2005 to 2006.

Jan's maritime career began as a Ship and Cargo Chartering Broker between 1994 and 2000. During this time, he specialized in the container, bulk, and break-bulk trades, successfully arranging several hundred voyage, time, and bareboat charters. Jan is a graduate of Colby College (A.B. 1990), Middlebury College (M.A. in Spanish, 1993), and Pace Law School, Evening Division cum laude (J.D. 2005). He also holds certificates from the Association of Ship Brokers and Agents in Chartering (1995) and Admiralty Law (2000).

In addition to his professional achievements, Jan has been an active member of the maritime community. He is a CEDR Accredited Mediator, has served as the Vice Chair, Treasurer, and Member of the Board of Trustees of the Norwegian Seamans' Church in New York. His professional affiliations include being a Proctor Member of the

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Maritime Law Association of the United States, the Connecticut Maritime Association, and the Norwegian-American Chamber of Commerce. Jan is fluent in Norwegian and Spanish.

Writer's Circle

In addition to resolving disputes, SMA members also write articles and books. In this new column, we recognize their achievements.

SMA President **LeRoy Lambert's** article, "Enforcement of Arbitration Clauses in Seafarer Employment Contracts under State Law," co-authored with **Brian McEwing** of Reeves, McEwing (Philadelphia), was recently published in the Tulane Maritime Law Journal (49 Tulane Maritime Law Journal 55 [2025]).

SMA member **Dr. William H. Moore's** article, "Sustainability and Greener Technologies: A Protection and Indemnity Club Perspective", was recently published in the Tulane Maritime Law Journal (49 Tulane Maritime Law Journal 149 [2025]).

In this issue of *The Arbitrator,* SMA members contributed the following articles: **Charles Anderson** ("Sinking the *United States*: the Battle to Save the World's Fastest Passenger Liner and America's Flagship", pp. 2- 7, *supra*), **George Tsimis** (" 'Do You Feel Lucky?': Weighing the Risks of Prosecution for Potential OFAC Sanctions Violations in the Aftermath of the English Commercial Court's Recent Decision in *O v. C* [2024] EWHC 2838 (Comm)", pp. 7-12, *supra*), **Louis Epstein** ("USTR Section 301 Determination on China's Targeting of the Maritime Logistics and Shipbuilding Sectors for Dominance" pp. 12-13, *supra*), **Robert Meehan** ("SMA Award Service ... At-a-Glance", pp. 25-27, *supra*) and **Austin Dooley** ("SMA's Seminar 'Maritime Arbitration in New York' ", p. 29, *infra*).

SMA's Seminar "Maritime Arbitration in New York"

By Austin L. Dooley, Chair, SMA Education Committee

The SMA's seminar program "Maritime Arbitration in New York" started in the 1970s and '80s. It went through a few iterations over the years as it was offered by the World Trade Institute and the SMA itself. In about 2005, the SMA Board of Directors restarted the program under the Education Committee, and it has run every year since. With the pandemic, it went online.

The seminar was modified in the last two years. The program now has weekly 3-hour meetings over three consecutive weeks with a fourth meeting taking place after skipping a week. The 2025 Seminar began on 31 January and will run through February 28, 2025.

During the week with no meeting, Professor Jeffrey Weiss provides a written review exercise. The exercise offers the opportunity to become accustomed to working with the SMA Rules by focusing on their finer points. For example, attendees are asked to decide on acceptable practices according to the Code of Ethics for both arbitrators and mediators. Some of the other questions include the Federal Arbitration Act, consolidation, shortened arbitration procedure and security. The review exercise also asks the attendee to review SMA awards and court cases involving arbitration, such as the *SAMHO DREAM,* SMA 4154 (2011) and *Stolt-Nielsen S. A. v. AnimalFeeds Int'l Corp.,* 559 U.S. 662 (2010). Overall, as in a traditional college level course, the lectures are backed up by the student actively delving into the seminar material.

There is always an interesting group attending the seminar and, as it is held via Zoom, attendees are sometimes from outside the New York tristate region or even from overseas. This year's group consists of ten industry professionals from a ship registry, a P&I Club, a commodity trader and practicing attorneys from New Orleans and Shanghai, China. In addition, attendees include a United Nations maritime specialist, a shipping analyst, a maritime finance banker and a dry bulk shipping consultant. CLE credit is also available for practicing attorneys who are taking the course.

The seminar has enabled the SMA to inform practicing attorneys and corporate decision makers about the SMA Rules. The Society has also become more diverse as individuals from different segments of the maritime industry have attended and subsequently joined the SMA.

The Seminar program is usually scheduled for the February to March period. If interested in attending, look for the 2026 program announcement on the SMA homepage (www.smany.org) in the Fall and follow the SMA on LinkedIn.

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Spotlight on the SMA

Maritime Law Association of the United States – Spring Meeting, April 30-May 2, 2025, New York, N.Y.

The SMA is proud to be a Sponsor of the MLA's Spring Meeting.

CMA Shipping Conference, April 1-3, 2025, Hilton Hotel, Stamford, Ct.

The SMA is honored to participate as a Supporting Partner at the CMA Shipping Conference as it celebrates its 40th anniversary. Incoming CMA Commodore Todd Clough, President & CEO, Fairfield Chemical Carriers LLC, Michael D. Tusiani, Chairman, Poten & Partners, and Rear Admiral John Okon, President, State University of New York Maritime College, are among those confirmed to lead discussions throughout the 2025 conference agenda. The conference runs throughout the three-day event, and flows harmoniously alongside the Supplier Expo, dedicated networking events, and the famous Gala Dinner. Registration and additional information available at: www.cmashippingevent.com.

Maritime Law Association – Arbitration ADR Committee Coffee Break, March 21, 2025, 11:30 AM - 12 noon (Virtual Meeting)

Christopher Nolan, Esq. of Holland & Knight LLP, the Chairman of the MLA's Arbitration & ADR Committee, has invited SMA Secretary, **George Tsimis,** to discuss what we can expect under Trump 2.0 regarding the shipping industry and economic sanctions policy, as well as a recent 2024 London Commercial Court decision interpreting U.S. sanctions laws and assessing whether a vessel owner's risk of imminent threat to criminal prosecution for complying with a foreign court order was "real or fanciful." (See also his article on this topic at pp. 7-12, *supra*.)

Admiralty Disruption Conference, March 14-15, 2025, New Orleans, La.

The SMA is proud to be a sponsor of the ABA TIPS Section 2025 Admiralty Disruption Conference. SMA President **LeRoy Lambert** will be a member of the panel "Survivor's Guide to Marine Casualties – Preparation to Resolution." LeRoy will attend along with SMA members **George Tsimis, Müge Anber-Kontakis** and **Molly McCafferty.** Registration is live at https://lnkd.in/gga8u-ic.

New York City Bar Association, Admiralty Committee, March 11, 2025, New York, N.Y.

SMA member **Charles Anderson** will be speaking at the next meeting of the Committee about the efforts to conserve the ocean liner *SS United States*. (See also his article on this topic at pp. 2-7, *supra*).

31st Annual HACC-NACC Shipping Conference, February 4, 2025, Apella Center, New York, N.Y.

The SMA was proud to be a sponsor of the 31st Annual HACC-NACC Shipping Conference "Staying Afloat in a Dangerous World." SMA Members **Robert Shaw, George Tsimis, Molly McCafferty, Dr. William Moore,** and **Müge Anber-Kontakis** attended the all-day conference. SMA Secretary, **George Tsimis** participated in a panel on economic sanctions under "Trump 2.0" and former President and Board Governor **Robert Shaw** had the honor of presenting the Marlene Daniels Award to Clay Maitland (IRI/The Marshall Islands Registry) for his significant contributions to maritime business.

Left to right: Dan Tadros, George Tsimis, David Tannenbaum

Left to right: Robert Shaw, Clay Maitland

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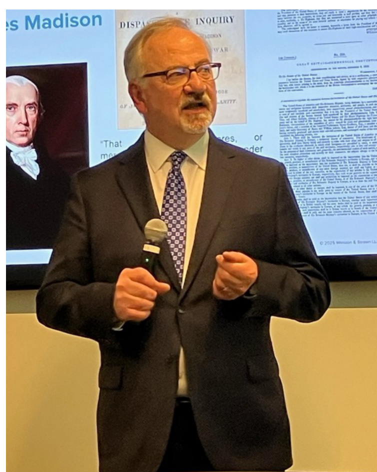
Left to right: Molly McCafferty, Müge Anber-Kontakis, George Tsimis

SMA MONTHLY LUNCHEONS*:

April 9, 2025: SMA member **Charles Anderson** will be speaking about the efforts to conserve the oceanliner *SS United States,* (See also his article on this topic, pp. 2-7, *supra*.) The luncheon will be held at 3 West Club, 3 W. 51st Street, New York, N.Y.

March 12, 2025: WISTA President **Christina Liviakis Gianopulos** of American Ship Repair Co. will be our featured speaker. The luncheon will be held at 3 West Club, 3 W. 51st Street, New York, N.Y.

January 8, 2025: Charlie Papavizas, Chair of Maritime Practice at Winston & Strawn, spoke about his book, "Journey to the Jones Act: U.S. Merchant Marine Policy 1776-1920" at a well-attended luncheon generously hosted at Winston & Strawn's New York office.



Charlie Papavizas

Left to right: George Tsimis, Charlie Papavizas, Robert Meehan, Müge Anber-Kontakis

December 9, 2024: At our annual holiday luncheon, the SMA honored **Raymond Burke, Jr.** and presented him with the first SMA Achievement Award in recognition of his storied 50 year career at Burke & Parsons. Ray and his colleagues supported the SMA and maritime arbitration from the beginning. During his career, Ray appeared as counsel of record in many published SMA Awards, was often appointed as arbitrator or selected as chair, and sat as a panelist in six published awards.

Left to right: Raymond Burke, LeRoy Lambert

Above: Raymond Burke

Left to right: Raymond Burke, David Martowski

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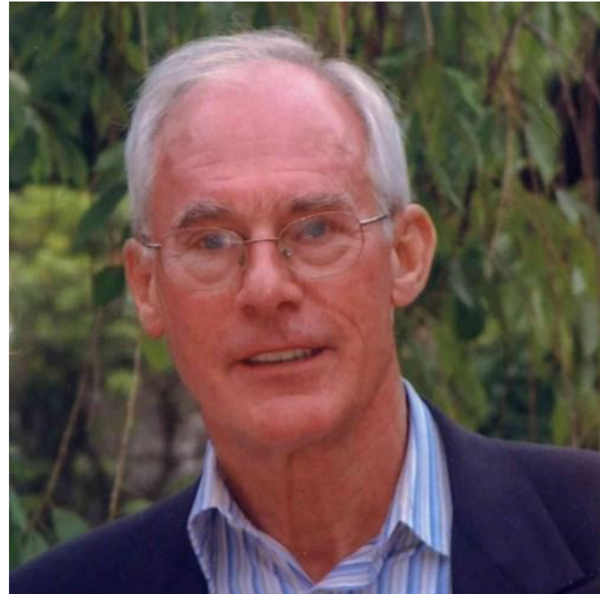
November 13, 2024: Evanthia Coffee and **Claudia Botero-Gotz,** Senior Lawyers, Gard (North America) Inc. presented their valuable insights on the topic of "Sanctions from the Marine Insurer's Point of View" at the offices of K&L Gates, NYC, who generously hosted this well-attended luncheon.

Left to right: Evanthia Coffee, Claudia Botero-Gotz

Left to right: Evanthia Coffee, Claudia Botero-Gotz, LeRoy Lambert

***If you are not receiving information about SMA luncheons and want to be added to the list, then please contact Patty Leahy, the SMA's Office Manager, at pleahy@smany.org**

In Memoriam – Klaus C.J. Mordhorst



Former SMA President, **Klaus C.J. Mordhorst,** passed away on Saturday, February 8, 2025, in Philadelphia. The SMA extends its deepest condolences to his family and friends. His obituary, detailing his distinguished career in the maritime industry, first as a shipping broker, becoming the President and principal owner of Leffler Chartering, Inc., and later focusing more on maritime arbitration, may be accessed at Klaus Mordhorst Obituary (1939 - 2025) - Legacy Remembers. Klaus joined the SMA in 1974 and served as its President from 2005-2009. He made important contributions to the SMA and the greater maritime community through his leadership, perspective, and good commercial sense. Klaus was respected by all and will be missed. His family is planning a memorial service that will take place this spring.

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In Closing

We thank everyone who contributed to this issue of *The Arbitrator*. A special thanks to Tony Siciliano and all readers who keep our membership abreast of maritime news items and developments. To our readers: we welcome all suggestions and feedback as to how *The Arbitrator* can best serve the needs of the maritime arbitration community in providing timely and relevant articles and information.

Thoughts or suggestions for a future article? Please let one of us know: sandra.gluck@gmail.com; louis.epstein@trammo.com; or gtsimis@gjtmarine.com.

Please also follow the SMA via LinkedIn.

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THE ARBITRATOR (ISSN# 1946-1208) is issued 3-4 times a year; published by The Society of Maritime Arbitrators, Inc., 127 West 30th Street, 9th Floor, New York, NY 10001. The publication is posted on our website and the subscription is free. To join our mailing list, please register your email address at www.smany.org.

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